United States Court of Appeals

for the Second Circuit



TRANSCRIPT

75-7061

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B

TRINITY EPISCOPAL SCHOOL CORPORATION and TRINITY HOUSING COMPANY, INC.,

Plaintiffs-Appellants,

ROLAND H. HARLEN, ALVIN C. HUDGINS and CONTINUE,

Intervening Plaintiffs-Appellants,

v.

GEORGE ROMNEY, SECRETARY OF DEPT. OF HOUSING AND URBAN DEVELOPMENT, S. WILLIAM GREEN, REGIONAL ADMINISTRATOR, DEPT. OF HOUSING AND URBAN DEVELOPMENT, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, CHARLES URSTADT, COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL, N.Y. STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, THE STATE OF NEW YORK, JOHN V. LINDSAY, ALBERT A. WALSH, HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK, THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, DONALD H. ELLIOTT, WALTER MCQUADR, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN, MARTIN GALLENT, ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS, ROBERT T. CONNER and THE CITY OF NEW YORK,

Defendants-Appellees,

STRYCKER'S BAY NEIGHBORHOOD COUNCIL INC.,

Intervening Defendant-Appellee.

TRANSCRIPT

(Volume II of IX - Pages 455-880)

UNITED STATES COURT OF APPEALS
FILED
FEB 20 1975
DANIEL FUSARO, CLERK

DEMOV, MORRIS, LEVIN & SHEIN
Attorneys for Plaintiffs Appellants and Intervening Plaintiffs-Appellants
40 West 57th Street
New York, New York 10019
757-5050

COUNSEL PRESS, INC., 55 West 42nd Street, New York, N.Y. 10036 • PE 6-8460

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Roland N. Karlan	73	102		
Roger Starr	184	237		

EXHIBIT INDEX

Defendant Stryker	In Identification	In Evidence
A	239	243

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Roger Starr (Resumed)		283	409 446	435

EXHIBIT INDEX

	Identification	In Evidence
Government		
B		286
C	290	291
D		437
Plaintiffs		
1		413
2	416	417
3	418	420
4	421	422

INDEX

WITNESS	DIRECT
Walter S. Fried	
Eugene J. Morris	458

EXHIBITS	IDEN.	EVID.
Plaintiff's Exhibit 5.		478
Plaintiff's Exhibit 6.		483
Plaintiff's Exhibit 7.		486
Plaintiff's Exhibit 8.		488
Plaintiff's Exhibit 9.		489
Court's Exhibit A.		496
Plaintiff's Exhibit 10.	507	511
Plaintiff's Exhibit 11.		516
Plaintiff's Exhibit 12.		519
Plaintiff's Exhibit 13.		524
Plaintiff's Exhibit 14.		527
Plaintiff's Exhibit 15.		528
Plaintiff's Exhibit 16.		528
Plaintiff's Exhibit 17.		531
Plaintiff's Exhibit 18.		531
Plaintiff's Exhibit 19.		534
Plaintiff's Exhibit 20.		535

559

I N D E X (CONTINUED)

EXHIBIT	IDEN.	EVID.
Plaintiff's Exhibit 21.		539
Plaintiff's Exhibit 22.		545
Plaintiff's Exhibit 23.		546
Plaintiff's Exhibit 24.		547
Plaintiff's Exhibit 25.		547
Plaintiff's Exhibit 26.		548
Plaintiff's Exhibit 27.		549

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Walter S. Fried (Resumed)	562	616		

EXHIBIT INDEX

	In Identification	In Evidence
Plaintiff		
28		563
29	586	587
Government		
E1	614	
F	621	622

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Walter S. Fried (resumed)		683	812 862	
Eliot Lumbard	841			

EXHIBIT INDEX

	Identification	In Evidence
Defendant		
G	685	688
Plaintiff		
30	812	
31	816	
Court's		
B	877	

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Walter Fried (Resumed)			882	884
			948	955
Elliot Lumbard (Recalled)	965	1033		

EXHIBIT INDEX

Government	Identification	In Evidence
H	909	911
I	916	

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Eliot Lumbard (Resumed)		1083	1146	1160

EXHIBIT INDEX

	Identification	In Evidence
Government		
I		1078
Plaintiffs		
34		1079

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Alvin C. Hudgins	1169	1225	1280	1282
Jerome L. Fine	1286	1352		

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
30		1164
31		1166
35	1184	
35-A	1188	1197,1199
35A(1)	1191	
36	1199	
36A,36B		1201
Defendant		
J	1275	

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Arthur Bromberg	1376	1465		

EXHIBIT INDEX

Plaintiffs	Identification	In Evidence
38	1448	
39	1449	1451
40	1453	1453
41	1455	1456

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Jerome L. Fine (Recalled)	1480	1535	1542	
Arthur Bromberg (Recalled)	1549	1616 1639	1625	
Efrain Frank Garcia	1642			

EXHIBIT INDEX

EXHIBIT INDEX

Defendants	Identification	In Evidence
K	1488	1488
L	1489	1492
M	1517	1519
N	1529	1530
Q		1631
R	1634	
Plaintiffs		
42	1617	1620
43	1639	

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Rafael Sifonte	1666			
Efrain Frank Garcia (Resumed)		1673	1677	1680
Edward Sulzberger	1682	1712		
Lisa Kolb Liebert	1785			

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Lisa Kolb Liebert	1846	1893		

EXHIBIT INDEX

	Identification	In Evidence
Defendants		
F		1844
Plaintiffs		
45	1845	
46		1892
47	1976	

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Jay I. Olnek	1994			
(Recalled)	2046	2067	2122	2126
Charles H. Tenney	2028	2030		
Lisa Kolb Liebert (Recalled)		2038	2042	
Austin K. Haldenstein	2130			

EXHIBIT INDEX

Plaintiffs	Identification	In Evidence
48		2021
49	2033	
50	2033	
51	2034	
52	2034a	
53	2046	
54	2048	2049
55	2059	2061
56	2065	
57	2135	
	2141	2142

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Austin K. Haldenstein (Resumed)	2160	2179		
Abe Roth	2242	2251		
Rafael Sifonte	2253	2283		
Dinah Sours	2303			
Walter S. Fried (Resumed)		2336		

EXHIBIT INDEX

Plaintiffs	Identification	In Evidence
60 through 64		2158
65		2177
66, 67		2178
68-A, 68-B	2343	
68-C	2348	
68-D, 68-E	2349	

Defendants		
V	2206	
W	2206	
X	2240	

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Dinah Sours (Resumed)	2357	2359		
M. Paul Friedberg	2400	2446		

EXHIBIT INDEX

Plaintiffs	Identification	In Evidence
69		2488

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Frank S. Kristof (Resumed	2504	2520 2628		
Miles L. Owens	2553	2563		
Roland N. Karlan	2614	2621		

EXHIBIT INDEX

Defendants	Identification	In Evidence
Z		2621

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
William Gaynor (Resumed)	2702	2796		
M. Paul Friedberg (Resumed)		2755		

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Harry G. Foden	2836	2878	2917	2921
James William Gaynor (Resumed)		2923	2955	

EXHIBIT INDEX

Defendants	Identification	In Evidence
AB	2929	2930
AC	2932	2933

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Roberta Brandes Gratz	2973	3027	3072	3074
John B. Maylott	3077	3108	3126	
David J. Goodman	3128	3148		
Robert G. Hazen	3153	3179		
David S. Olinger	3186	3197		
Bernard J. Wohl	3214			
Julia Rudy Matlaw	3252			

EXHIBIT INDEX

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
S. William Green	3282	3342	3381	3383
Sidney H. Morison	3385			
Elaine J. Schwartz	3405	3439		
Thomas Farrelly	3442	3463		
Karen Jorgensen	3467			

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Frank S. Kristof (Recalled)		3485 ~~3493~~		
Henry J. Browne	3503	3553	3558	
Hannah Hess	3560	3583		
Betty Joan Lawrence	3585			
William C. Hunter	3594	3605		
Irvin Schwartz	3613	3618		
Peter J. Prezioso	3621	3652	3659	3664

EXHIBIT INDEX

Defendants	Identification	In Evidence
AH		3496
AI		3498
AJ	3622	3627
AK	3623	3627
Plaintiffs		
70		3500

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Milton Mollen	3669			
Herbert J. Gans	3690	3708		
Carlo Justinano	3734			
Shirley Sanderson	3754			

EXHIBIT INDEX

Defendants	Identification	In Evidence
AL	3688	3689

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Samuel Crystal	3764	3774		
Lee Goodwin	3781	3794		
Joseph J. Christian	3808	3812	3815	
Hermanda Badillo	3835			

EXHIBIT INDEX

Plaintiffs	Identification	In Evidence
47		3767

TRINITY EPISCOPAL SCHOOL CORP., and TRINITY HOUSING CO., INC.,

Plaintiffs,

and

POLAND N. KARLAN, ALVIN C. HUDGINS and CONTINUE,

Plaintiff-intervenors

vs.

GEORGE ROMNEY, Sec. of Dept. of Housing and Urban Renewal, et al.,

Defendants.

71 Civ. 4315

October 10, 1973
10:30 a. m.

(Trial resumed.)

THE COURT: Well, gentlemen, you know the old addage about -- not the addage, but the lines of poetry about "The best laid plans of mice and men often go awry."

Here we are trying to squeeze in every moment so that we can devote it to this, and through an accident on the Penn Central Mr. Land has been delayed, and it is now a few minutes after 11. There are many other things we all could have been doing, but that is it.

I cannot release you. We have got to wait around until Mr. Land comes. So you wait around here and I will wait around doing some stuff up in chambers. That is the best solution. I cannot go on without the government's

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

representative or anybody's representative who is a party to this litigation.

Off the record.

(Discussion off the record.)

(Recess.)

THE COURT: Mr. Land, we missed you.

MR. LAND: I am sorry I am late.

THE COURT: I think you ought to place on the record why you were late.

MR.LAND: Yes, I will.

THE COURT: It is five of noon.

MR. LAND: Yes. The reason I am late is that I caught the 8:02 out of Larchmont this morning, the Penn Central New Haven train, and we proceeded for about 50 yards and stopped for the next two and a half hours. The cause of that delay was a derailment further up the road, a derailment which then resulted in a trestle being struck and falling across all four lines of the tracks, resulting in no entrance into nor egress from Grand Central Station. And it was finally cleared up a bit and we proceeded in. Had my train been on time I would have arrived at the courthouse at 10 minutes before nine.

THE COURT: Mr. Land, I just wanted the record to show why we began at this hour and not the hour fixed. I am

sorry that you had that experience, but the record shows why you were not able to make it and I will be especially kind to you to make up for the discomforture that you experienced.

Please proceed.

MR. MORRIS: Walter Fried.

W A L T E R S. F R I E D, called as a witness, on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE COURT: Mr. Fried, please bear in mind that you are giving sworn testimony in a courtroom and that you cannot discuss the matter the way you do outside at your office. There are certain rules, and the judge, the law says, must not sit here like a wooden indian and let a witness rattle on when it is not in response to a question. You are not an advocate, you are a witness.

THE WITNESS: Yes, sir.

THE COURT: You will just answer the questions that are put to you. The lawyers on both sides are competent. They know the law, and if they want information, let them ask for it.

THE WITNESS: Yes, sir.

THE COURT: Very well. Keep your voice up so that we can all hear you.

THE WITNESS: I will try.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Fried, what is your occupation?

A I am presently vice chairman of the New York City Housing Authority.

Q Are you an attorney?

A Yes, sir.

Q When were you admitted to practice?

A May 1930.

Q May 1930.

A Yes, sir.

Q Have you been active in the practice of law? Did you become active subsequent to your admission to the bar?

A I did.

Q For how long did you actively practice law?

A Until 1942.

Q What did you do in 1942?

A Enlisted in the United States Army.

Q When did you get out of the Armed Forces?

A The winter of 1945 - '46.

Q Where did you go when you left the armed services?

A The Office of Temporary Controls, Federal Govern-

ment.

Q The Federal Government.

A Yes, sir.

Q How long were you there?

A Very short period. It was then converted to the Office of the Housing Expeditor.

Q How long were you there?

A I stayed there until New York State took over rent control.

Q Was that May 1, 1950?

A 1950.

Q Where did you go then?

A I went to the New York State Rental Commission.

Q How long were you with the New York State Rent Commission?

A Until February of 1955.

Q Where did you go from there?

A The Housing and Home Finance Agency of the Federal Government.

Q Was that the Federal Government agency that had jurisdiction of the West Side Urban Renewal Plan, the West Side Urban Renewal Project?

A It was.

Q What was your role or what job did you have there?

A In 1955 until December I was general regional counsel, and then I became regional administrator.

Q So you were the administrator for the agency during what years?

A From December 1955 till April 1960.

Q Until April 1960?

A Yes, sir.

Q Was that the agency that had supervision on behalf of the federal government of the processing of approvals for survey and planning, capital grant, and all the other things in connection with the West Side Urban Renewal Project?

A It was.

Q Where did you go after you left the federal government?

A I became a member of the Housing and Redevelopment Board of the City of New York.

Q How long were you a member of the Housing and Redevelopment Board, during what period?

A 1960 until, I think it was, the winter of '66 or '67, when it was merged into the Housing and Development Administration of the City of New York.

Q Was the Housing and Redevelopment Board the local public agency of the City of New York in connection with the West Side Urban Renewal Project?

A It was.

Q Did you, as a member of that Board, have jurisdiction of the administration and development of the West Side Urban Renewal Project during that period?

A We did.

Q What agency followed the Housing and Redevelopment Board?

A The Housing and Development Administration.

Q Were you with that agency?

A I was.

Q Would you tell us what role you played with that agency?

A I was deputy commissioner in charge of housing production.

Q As such, did you have jurisdiction of housing production in the West Side Urban Renewal Area along with your other activities?

A Of those projects which were financed under the State Mitchell-Lama Law.

Q And you had jurisdiction of that?

A Yes.

Q That was done under your supervision as deputy commissioner?

A That's right.

Q When did you leave the Housing Development Administration?

A I left there in June of 1970.

Q Where did you go then?

A In August of 1970, I became a member of the New York City Housing Authority.

Q That continues up to the present time?

A Yes.

Q Are you at the present time a member of the New York City Housing Authority?

A Yes.

Q Does the New York City Housing Authority have jurisdiction of public housing projects in or about or on the perimeter of the West Side Urban Renewal Area?

A It does.

MR. LAND: I object to the form of the question. Can we be a little more specific on the jurisdiction?

MR. MORRIS: Yes, sir.

THE COURT: All right, he is going to cure it. Go ahead.

Q Would you tell us what aspects of the West Side Urban Renewal Area Project the Housing Authority, with whom you are presently associated, has to do?

A Well, we own and manage those projects which are

financed under the Public Housing Law.

In addition, when requested to, we will process the construction or the approval and construction of new public housing.

Q Did you, during your period with the New York City Housing Authority, have anything to do with the situation with respect to site four and site 30 in the West Side Urban Renewal Area?

A Well, I personally had nothing to do with site 4, but with respect to site 30, our housing authority approved a plan and project for public housing for that site, and I personally appeared before the Board of Estimate in support of it.

Q But the agency of which you were a member does have jurisdiction with respect to site 4, does it not?

A Yes.

Q Do you also have jurisdiction of Steven Weiss Houses, which is located in the West Side Urban Renewal Area?

A We do.

Q Do you have jurisdiction of the Hostes houses, which is immediately on the perimeter of the West Side Urban Renewal area?

A We do.

Q Do you have jurisdiction of the Douglas addition, which is on the perimeter of the West Side Urban Renewal area?

A We do.

Q Mr. Fried, you therefore, from your testimony, have been connected with the government agencies that have been responsible for the development of the West Side Urban Renewal area. Would you tell us what period you have been connected with the development of the West Side Urban Renewal area from the very beginning when you first became involved right through?

A From 1956 to date.

Q Have you been actively involved during that entire period?

A In some form or other, yes.

Q So that you are fully familiar with what has gone on with respect to the West Side Urban Renewal area?

A With most of it.

Q Where do you live, Mr. Fried?

A 400 West End Avenue, which is the Northeast corner

of 79th Street and West End.

Q So that youlive on the West Side of Manhattan?

A I do.

Q And that's within a distance of 10 or 12 blocks from the West Side Urban Renewal area; is that correct?

A It is.

Q How long have you lived at 400 West End Avenue?

A 11 years.

Q Where did you live before that?

A 94th Street and West End Avenue.

Q And that is just about 2 blocks from the West Side Urban Renewal area; is that right?

A It is.

Q How long did you live there?

A About eight years.

Q Did you live in the West Side area prior to that?

A I did.

Q Would you tell us where.

A 103rd Street and West End, 106th Street between Broadway and Amsterdam, 86th Street between West End and the Drive, 111th Street and Broadway, and 113th Street and Broadway.

THE COURT: Were you moving that often because you couldn't pay the rent?

A It was over a period of 26 years during which time I entered the army, my mother and father died. I got married, had a child.

THE COURT: All right. I didn't want to start off anything.

A Pardon me. Part of the time it was because we couldn't pay the rent.

Q Mr. Fried, in view of your residence in the West Side of Manhattan, have you been familiar for a period of years with the West Side area in general and with the West Side Urban Renewal area in particular?

A I have.

Q Does that familiarity come as a result of direct personal contact with the area?

A It does.

Q And direct personal knowledge of the area?

A Yes.

Q Did you make it your business to keep informed as to what was occurring in the area with respect to the housing and urban renewal and urban development during this period of years, of the West Side Urban Renewal Project?

A I did.

Q And you therefore are fully familiar with the situation with respect to that?

A Well, familiar.

Q Yes.

Would you tell us what the situation was on the West Side of Manhattan where you lived during the period subsequent to World War II and up to the time when activity began for the development of the West Side Urban Renewal Project? Incidentally, what year was that when activity began?

A 1956.

Q Would you tell us what the situation was in the West Side area during that period of time prior to 1956?

THE COURT: That calls, of course, for an elaboration, which you are given permission to engage in.

A I first moved into the area in 1926. At that time there was a cross-sectionof -- it was integrated economically. There was a cross-section of different economic groups, and there was a cross-section of racial groups. Particularly during that period we had the first influx of people from Puerto Rico.

On 100th Street and the vicinity of Manhattan Avenue, as long as I can remember, there was a black community. They all lived side by side except for the period during the depression, there was very little strife. That's about what I can say about it.

Q Let us come to the period of approximately 1954. Are you familiar with an amendment to the National Housing Act which affected the West Side Urban Renewal area which was enacted in 1954?

A Yes. It liberalized --

Q Just a moment. Would you tell us what the effect of that change was in the National Housing Act as it affected the West Side Urban Renewal area?

A Well, it made it possible now --

MR. GOLD: Your Honor, I am going to object to that. There was no West Side Urban Renewal area in 1954.

Q As it affected the area. I will change that.

THE COURT: All right. The question is withdrawn and it will be reframed. Will you reframe it, please?

MR. MORRIS: Yes.

Q Will you tell us how that 1954 amendment to the Act affected the situation on the West Side?

A Well, it now was possible to have an urban renewal project, whether it be on the West Side or anywhere else, where you didn't have to clear the entire area, where you could have a certain amount of rehabilitation as well as clearance and new building.

Also conservation where appropriate.

Q Did that give rise to any activity on the West Side

with respect to possible urban renewal on the West Side as a result of that provision?

A Well, it came about in this way: In 1955, the early part of the winter, the Rain Subcommittee of the House Banking and Currency Committee held public hearings in the City of New York. One of the witnesses before that committee was Mr. Cruz, who was then with the New York City Housing Authority, and he mentioned the fact that the City would like to make use of the new provisions of the Act, particularly on the West Side.

And shortly after that there was further discussion within the City administration as to doing just that.

Q Was James Felt in any way connected with that activity?

A Yes, he was. At that time --

THE COURT: "Yes, he was" is the answer. Next question.

Q Would you tell us what his connection was and what contact you had with him with respect to this situation?

A Well, at that time Mr. Felt -- I don't know whether he was then chairman of the planning commission but he was Mayor Wagner's closest advisor on the subject of zoning and housing --

Q And what was your contact with him with respect to

this area?

A Well, I think at that time he may have been the commissioner of real estate. He approached me as a federal official and asked whether it would be possible to receive a grant to make a general study of an area on the West Side of Manhattan to come up with some ideas of how that area could be improved from the condition it was then drifting into.

Q What would you say that condition was that it was then drifting into?

A Deteriorating.

Q Would you elaborate on what you mean by deteriorating.

A Prior to the 1954 Act, an area had to be blighted before you could go in with urban renewal. The '54 Act, by definition, said if an area was deteriorating --

Q That's i-n-g at the end, isn't it?

A Yes.

Q As against e-d?

A Yes. -- you could then have an urban renewal project. And Mr. Felt was of the opinion that as a result of studies that he and others had made that this was true of the West Side -- what became the West Side Urban Renewal area. And in fact the planning commission on June 6, 1956, made such a finding under the, I think, state law and amended the map of the City of New York to show that area as deteriorating.

Q As a deteriorating area?

A Yes, sir.

THE COURT: When you say "that area," you are talking about?

A 87 to 97 from Central Park to Amsterdam Avenue.

Q Subsequent to that, were studies made with respect to that particular area?

A Yes.

Q Would you tell us what the studies were and what they involved?

A Well, the studies were made pursuant to a grant from the federal government and resulted in a final report.

Q I show you Defendant's Exhibit A in evidence, marked Urban Renewal New York City Planning Commission, and ask if this is the report to which you refer?

MR. GOLD: Your Honor, maywe have a reference to a date on that?

THE COURT: Surely.

A Yes, this is the report.

THE COURT: What's the date?

Q What's the date, Mr. Fried?

A I don't know where it would appear.

Q There's a transmittal letter there, isn't there? Look at page 2.

A Not in this copy.

Q Look at page 2. Down at the bottom on the righthand side.

THE COURT: Have you got the date?

MR. MORRIS: Yes.

A This one starts at page 4.

Q Oh.

THE COURT: You mean the exhibit starts at page 4?

MR. MORRIS: May I see that? Maybe the exhibit isn't complete. May I see that, please? Our copy has the earlier pages.

THE COURT: Take it slowly. First give them the date. I don't care where you get it from. What date do you say?

MR. MORRIS: April, 1958.

THE COURT: Now, look at Defendant's Exhibit A, Mr. Morris, because you have been handling the exhibits.

MR. MORRIS: It does not have that date on it.

THE COURT: Are there pages missing from A?

MR. MORRIS: No, there does not seem to be. The copy which is in evidence is slightly different from the copy which I have of the same report. Mine has a date and the one in evidence does not.

THE COURT: I will leave it with you and your

COURT REPORTERS
FOLEY SQUARE, N.Y. 10007 TELEPHONE: COrtland 7-4580

colleagues or your opponents.

Get together and see whether A should stand this way or whether another copy should be substituted for it.

You gentlemen decide that.

MR. MORRIS: All right.

Q Now, Mr. Fried, would you tell us what this plan shows?

A It shows a general proposal for an upgrading of the area by new construction of privately financed housing, government assisted housing, some rehabilitation particularly of brownstones and conservation activity.

THE COURT: Does it conclude a conclusion or a finding as to the deteriorating condition?

THE WITNESS: Yes, sir.

Q And does it specify the area to be encompassed within the West Side Urban Renewal area designation?

A That's my recollection, yes.

Q What is that area that it shows?

A It shows the area from 87th Street to 97th Street, from Central Park to Amsterdam Avenue.

Q Is that the area which is covered by what we now call the West Side Urban Renewal area?

A It is.

Q How did that study come about? Was that a City study

or a federal government study?

THE COURT He's already said federal, didn't you?

A It was a City study financed by the Federal Government.

THE COURT: I beg your pardon.

Q Was that study made as a result of financing given by the Federal Government during the period that you had jurisdiction of such grants as regional director for the H.H.F.A.?

A Yes. My name is mentioned in here as such.

Q And your name appears in the study itself?

A Yes.

Q What was the agency that prepared that study?

THE COURT: Referring to A in evidence.

MR. MORRIS: Yes.

A It was the Mayor's Committee on Urban Renewal.

Q And who was chairman of that committee?

A It doesn't mention the chairman. It just mentions the various members but it mentions James Felt as Chairman of the City Planning Commission.

Q Who did you have contact with at that time with respect to that study?

A James Felt.

Q And did you have frequent contact with him with

respect to the study?

A I did.

Q Were you fully familiar with what was done with respect to the study?

A Well, he kept me advised.

Q And did you supervise the study in view of the grant of funds from the Federal Government of which you were the regional administrator?

A Only to the extent to see that it was completed.

Q When it was completed, was it submitted to your office?

A It was.

Q What occurred subsequent to the time that the study appeared? The study was April, 1958. What occurred subsequent to that?

A In what respect?

Q With respect to the development of the West Side Urban Renewal Plan.

A There was formed by the City of New York another urban renewal agency to supplement the slum clearance committee.

Q What was that called?

A I don't recall the exact name.

Q Was it called the Urban Renewal Board?

A That's right.

Q Who was designated as chairman and director of that board?

A James Felt was the chairman and I think Samuel Ratensky was the executive director. Either he or Bernstein, I don't know which man took over.

Q Dick Bernstein, is that?

A Yes.

Q So it was either Sam Ratensky or Dick Bernstein?

A They were both active in it.

Q Did Mr. Felt and Mr. Ratensky continue to be active in connection with the development of the West Side Urban Renewal Project over the years subsequent to the preparation of this report?

A They did.

Q Did there come a time when application was made for a survey and planning applicatio to the H.H.F.A., your agency?

A There was.

Q Could you tell us about when that occurred?

A I think sometime in 1958.

Q What occurred with respect to that survey and planning application? Was it approved by your agency?

A It was approved by the Housing and Home Finance Agency.

Q That's the agency of which you were regional administrator?

A Right.

Q And approximately when was it approved by the H.H.F.A.?

A In 1958.

Q In 1958 or '59?

A I think '58. Approved the application for money.

Q What happened after the 1958 application? Was that approved by the H.H.F.A.?

A Yes.

Q And what was the date of the approval?

A It was in 1958. I don't know the exact date.

Q Was there also a capital grant reservation made at the same time?

A Yes.

Q And approximately when was that made?

A At the same time the approval of the ~~blank~~ survey and planning application phase.

Q And was the matter then submitted to the Board of Estimate for approval of the ~~blank~~ survey & planning advance and the capital grant reservation?

Corrected at p 625

A It was.

Q When was that done?

A Also in 1958.

Q Was that then submitted to the City, and as a result of that was a preliminary plan prepared by the City of New York?

A It was.

Q I show you a copy of the preliminary plan of the West Side Urban Renewal area submitted by a letter of transmittal dated May 28, 1959 and ask if this is the preliminary plan to which you refer?

A It is.

MR. MORRIS: I ask that the plan be marked for identification.

THE COURT: Are you going to offer it?

MR. MORRIS: Yes.

THE COURT: You can save a step.

Any opposition to it? It is an official report.

MR. GOLD: No objection.

THE COURT: Received. Mark it in evidence, Mr. Clerk.

(Plaintiff's Exhibit 5 received in evidence.)

Q Would you tell us what the preliminary plan provided with respect to the West Side Urban Renewal area?

THE COURT: Well, that question is very general. That would mean he would have to give us the whole contents of the entire exhibit.

MR. MORRIS: I will reframe the question.

Q Mr. Fried, did the preliminary plan, which is now in evidence as Plaintiff's Exhibit 5, proceed along the lines of the study which is already marked in evidence as Defendant's Exhibit A?

MR. LAND: Your Honor, that is a very general question.

Q And if there are any changes, would you tell us what they are?

THE COURT: Hold it.

MR. LAND: The question is so very general, perhaps the plan would speak for itself.

THE COURT: Yes, but the Court would like to have the benefit of someone who occupies the particular position that Mr. Fried says that he has. If I am impressed with it, as it goes along, that will have some meaning. If I am not, I will reject it. But I ought to have the benefit of his interpretation.

MR. LAND: The form of the question is too broad.

THE COURT: Well, it is somewhat broad but I will allow it and allow the witness to testify, since he is an expert in the field.

Do you understand the question?

A Yes, and I think it can be summarized very quickly.

The following are proposed as general standards. I am reading now.

THE COURT: From what page of the exhibit?

A Page 15.

THE COURT: Quote.

A "The elimination of substandard housing with particular emphasis on the elimination of overcrowding and unsuitable uses.

"2. Provision for new residential development of various types and rental ranges to serve a broad cross-section of the community with appurtenant retail retail development.

"3. Preservation and improvement of community facilities, including the provision of additional open space for both active and passive recreation."

Turning the page to page 16.

"4. Encouragement of permanent residents in the area through the improvement of amenities and accomodations for family living.

"5. Creation of a harmonious balance of high and low structures and of open spaces.

"6. Improvement of the tax base of the area by encouraging private investment on the broadest possible basis.

"7. Reduction of traffic congestion and parking problems and, lastly,

"8. Development of active community participation throughout the renewal process."

THE COURT: Close quote?

A Close quote, and I think that summarizes the thrust of the preliminary plan.

Q Now, did that preliminary plan come about as a result of subsidies from the federal government?

A Yes.

Q Would you tell us what that was?

A The federal government advanced the funds to prepare the plan.

Q And were those funds advanced during the time that you were the regional administrator?

A They were.

Q And therefore you had jurisdiction of the funding of the preparation of thatplan and you were familiar with it, is that correct?

A Yes, sir.

Q And did there come a time when that plan, the preliminary plan, Plaintiff's Exhibit 5, was submitted to the various city agencies for approval?

A Yes.

Q Would you tell us what procedures were followed with respect to obtaining approval of the plan?

A First, there had to be a public hearing before the City Planning Commission and approval by the City Planning Commission.

Then there had to be a public hearing before the Board of Estimate and approval by theBoard of Estimate.

Q Wasn't there required to be approval of City Line Agencies as well as the City Planning Commission and the Board of Estimate?

A Well, we were concerned with the official approvals as required under the federal law.

Q Was the administration of the plan locally at that time, in 1959, under the jurisdiction of the Urban Renewal Board of James Felt?

A It was.

Q Did there come a time when the City Planning Commission approved the preliminary plan?

A There did.

Q I show you this report dated July 15, 1959, of the City Planning Commission and ask if this is the report of the City Planning Commission approving the plan?

THE COURT: The plan envisaged in Exhibit 5?

MR. MORRIS: Yes, your Honor.

THE COURT: Then say so. Complete the question so anybody who reads the record can say "This is exactly what was said." and so forth.

What is your answer?

A This is the approval by the City Planning Commission of the preliminary plan which is Plaintiff's Exhibit 5.

Q And was that approval in accordance with the provisions of the preliminary plan?

A It was.

MR. MORRIS: I offer it in evidence

THE COURT: Show it to counsel.

MR. GOLD: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 6 received in evidence.)

Q During this period, did you make observations of what was occurring with respect to the area itself, the West Side Area, at and about this time in 1958, the time of the study,'59 and these approvals?

A I did.

Q What did you observe in the area was happening to the area at that time?

A Generally deteriorating.

THE COURT: Do you see, that's an all embracive term and it has a great deal of significance to you in your field and I think I understand it, but for the sake of the record, people might differ on what constitutes deterioration in that particular field.

Would you give me just a few more words as to what you mean when you employ the word "deteriorating" in your answer now or last given.

A There was an increase in turnover in tenancy, with middle class families leaving the area and many of the apartment houses on the side streets were being taken over by families of lower income or single family occupancies.

In several instances, several of the buildings became a haven for people as they were released from mental institutions and from prisons.

In addition thereto, there was a decrease in the

maintenance of many of the structures on the west side. This was the period of the great drive to convert from manually operated elevators to automatic operated elevators.

In addition thereto, many of the brownstones were being converted into single room occupanies. Many of the apartments in the larger apartment houses were being used as single room occupancy, where the main tenant would rent out a room to an individual.

All of this contributed to a deteriorating effect in the area, in the Urban Renewal Area and the surrounding area.

Q Was the preliminary plan, after approval of the City Planning Commission, then submitted to the Board of Estimate for its consideration?

A It was.

Q I show you this resolution dated October 22, 1959, of the Board of Estimate and ask if this is the resolution approving the preliminary plan?

A It was.

MR. MORRIS: I offer it in evidence.

THE COURT: Any objection?

MR. LAND: No objection, your Honor.

MR. GOLD: No objection.

THE COURT: Received.

don't remember the third member because there was a turnover

xx

(Plaintiff's exhibit 7 received in evidence.)

Q Once the plan was approved by the City Governmental Agencies, the City Planning Commission and the Board of Estimate, what is the next step with respect to the processing of an urban renewal plan?

A It requires approval of the federal government and a capital grant contract.

Q Is that called the Part I, final project approval?

A No. That's the Part II.

Q Which is Part II?

A The execution of it. The planning is the part one. It was completed and it was approved by the Board of Estimate in that document.

After that, there is an application for a part II contract which is for the execution of the plan that was approved by the part I contract.

Q And as a result of that activity, was a final plan prepared?

A Yes.

Q Who prepared the final plan?

A I think it was prepared by the Housing and Redevelopment Board.

Q Can you tell me approximately when that final plan was prepared and submitted to the City Planning?

the area, and that it was felt that the number of 2500 units

A In between 1961 and 1962.

Q During that interim period between the preliminary plan and the final plan, what occurred with respect to the plan itself? What was done by the local agencies?

A Well, the Urban Renewal Board, which had started it, was abolished by law and its functions were incorporated in the new Housing and Redevelopment Board, which has been created pursuant to state statute.

Q And what occurred with respect to your activities at that time?

A In April of 1960, I resigned as a federal official and was appointed a member of the three man board of the Urban Renewal --

Q The Housing and Redevelopment Board?

A Housing and Redevelopment Board, HRB.

Q Did you at one time become vice chairman of that board?

A From time to time.

Q Prior to the creation of the Housing and Redevelopment Board, did the Urban Renewal Board, the Board of which James Felt was chairman, prepare a final plan?

A I don't recall whether it was finally prepared by the Urban Renewal Board or the Housing and Redevelopment Board.

priority to other projects within the West Side on turnover,

Q The final plan came before the City Planning Commission for approval, is that so?

A Yes.

Q And that was presented to the City Planning Commission by the Board of which you were a member, the Housing and Redevelopment Board, is that right?

A It was.

Q And I show you this report of the City Planning Commission on the West Side Urban Renewal Area, final plan, dated May 29, 1962, and ask if this is the report of approval of the plan by the City Planning Commission?

THE COURT: Of the final plan?

MR. MORRIS: Of the final plan.

A It is.

MR. MORRIS: I offer it in evidence.

THE COURT: Show it to counsel.

MR. GOLD: No objection.

THE COURT: Received.

(Plaintiff's exhibit 8 received in evidence.)

xx

Q After approval of the City Planning Commission did the matter then proceed to the Board of Estimate of the City of New York?

A It did.

Q Was it presented to the Board of Estimate by your

ment Board on Friday, December 9, 1966, before the Board of

agency, the Housing and Redevelopment Board?

A It was.

Q I show you the Board of Estimate resolution dated June 26, 1962, and ask if this is the resolution approving the final plan?

A It is.

MR. MORRIS: I offer it in evidence.

THE COURT: Show it to counsel.

MR. GOLD: No objection.

THE COURT: Received.

xx (Plaintiff's exhibit 9 received in evidence.)

THE COURT: Gentlemen, will you see to it, if possible, that I get, as we go along, a photocopy of all exhibits? You retain them and just a word or two is said with respect to them and there are occasions when I would like to pick them up and study them along with the taking of testimony.

So, will you, at your very earliest convenience, be good enough to send with a covering letter the particular copies of which exhibits you are good enough to transmit to me, and I hope it will be all of them, and I would appreciate that.

MR. MORRIS: Yes, your Honor.

In connection with the motion papers which were

THE COURT: Who transmitted that?

before the court when this matter first came before your Honor, there were annexed to those motion papers a large number of the exhibits that I am now introducing into evidence.

THE COURT: All you have got to do, then, is just call it to my attention and say "we are not bothering you with additional copies of the following exhibits because they are a part of the motion papers," and that's that.

MR. MORRIS: Thank you.

Q Mr.Fried, at or about the time the final plan was introduced to the agency and approved by your Board, the Housing and Redevelopment Board, and by the City Planning Commission and by the Board of Estimate, was there any discussion with respect to the number of low income housing units to be incorporated into the plan?

A There was.

Q Would you tell us what that discussion was.

A May I elaborate, sir?

THE COURT: Yes.

MR. LAND: One point, your Honor. The particular plan we are speaking of now is being referred to as the final plan. However, I think there are certain plans that have succeeded it.

Perhaps he could refer to it by date or something of that nature, a 1962 plan, or whatever.

THE COURT: You are perfectly right. You would like to have him refer to the particular plan by date; is that what you mean?

MR. LAND: That might be easier for purposes of clarity, as we go along.

THE COURT: I wish you would do that. It's very important. Otherwise, I won't be able to understand it.

MR. MORRIS: Your Honor, I might say for the record that I propose to introduce all the amendments to the plan progressively, as I have done up to now, and as each amendment is introduced, we will discuss the provisions with respect to that amendment.

My question now is addressed specifically to the provisions of the Urban Renewal plan itself, which was approved in 1962, in accordance with the last two exhibits.

THE COURT: In the light of what you have just said, you may proceed in your own fashion.

Q Will you proceed, Mr. Fried.

THE COURT: Now he has forgotten the question or, if he hasn't, we still want it.

What is the question you wish him to answer.

Q Would you tell us whether there was any discussion at or about this time of the approval of the final plan with respect to the number of low income housing units to be in-

corporated into the plan?

THE COURT: That calls for a yes or no answer.

A There was.

Q Would you tell us what those discussions were.

THE COURT: Now, here they are entitled to particularities.

When, where and who was present. I can't let him just get the evidence in and let it be summed up by him.

The other side is entitled to something of a detailed recycle of what took place, unless you have documents.

MR. MORRIS: I have documents.

THE COURT: If you have documents that sum it up, then I don't see the sense of going into details of a discussion.

Q Mr. Fried, at or about the time of the submission by your Board of the final plan to the Board of Estimate and the City Planning Commission, was a report prepared by Herman Badillo, Deputy Commissioner for relocation of the City of New York, Department of Real Estate, relating to the West Side Urban Renewal Project dated June 22, 1962?

A There was.

Q I show you this report and ask if this is the report of Mr. Badillo.

MR. LAND: That's in evidence and should be re-

regard to the Exhibit 10 for identification. All right,

ferred to as such.

THE COURT: What is it?

MR. GUILD: It is in evidence as defendant's exhibit D.

THE COURT: Will you look at it and satisfy yourself that it is already in evidence?

MR. MORRIS: It is.

THE COURT: All right. You are being shown a copy of exhibit D in evidence, Mr. Witness.

What is your answer.

A There was such a report.

Q There was such a report.

And would you tell us what the circumstances were with respect to that report and how the report came about?

A The preliminary plan, as approved by the City Planning Commission, which is exhibit --

THE COURT: I think you ought to have him nail it down. It's very important. When I come to look at the minutes, I want to know for sure what he is talking about.

Q Plaintiff's exhibit 8?

A I am sorry, sir. The final plan, as submitted to the City Planning Commission.

Q That's Plaintiff's exhibit 8.

THE COURT: Is that it? You must adopt it. He is

more in depth, if I could.

not the witness. You are the witness.

Is that what you are talking about?

THE WITNESS: I'll tell you in a minute.

THE COURT: Take your time.

THE WITNESS: Yes, sir.

THE COURT: Now, go on.

A This report of the City Planning Commission --

THE COURT: 8 in evidence.

A --8 in evidence, called for 1,630 units of low income housing, either in new construction, in rehabilitation or in new otherwise -- financed projects.

Q Incidentally, may I interrupt a moment?

Was that an increase from the amount that had been discussed in connection with the preliminary plan and the study that was made of the West Side Urban Renewal area?

A It was.

Q What was the nature of that increase?

A The study, if I recall correctly, called for 400 units of low income housing.

The preliminary plan, I think, called for one thousand. I think that is plaintiff's exhibit 3.

THE COURT: This is important. You better have him give us what he bases that on.

Is it your memory or is reflected in the exhibits.

publication and the amendments you referred to?

THE WITNESS: I looked at the exhibit when it was handed to me.

THE COURT: This morning, when you were on the stand?

THE WITNESS: Yes.

THE COURT: Than that is exactly what must be done. Will you have those ready? We will resume at 2:15, promptly. We will sit until five.

(Recess.)

THE COURT: Well, I will take it for that limited

P.M. Tib

dhcb 496

(Afternoon Session - 2:15 p. m.)

W A L T E R S. F R I E D, resumed.

THE COURT: Mr. Clerk, will you please mark as court's exhibit this communication of October 5 addressed to me by Community Actions Legal Services, Incorporated.

xx (Court's exhibit A marked.)

THE COURT: Court's exhibit A for identification, gentlemen, you will examine whenever you get a chance and see whether you have any objection to making that part of the trial record.

The next thought before I forget it. If you wish, and only if you wish it, we start tomorrow morning at 9 o'clock and sit until 1. Do not give me any reasons if you can or you cannot. Whichever you wish, either at 9 or 10. You have to agree among yourselves. I do not care to know any reasons: I am ready to come at 9 if you wish it.

When continuing with this witness, be good enough to have him always refer, despite the fact that it might be repetitious, to exhibits. I do not want a single answer that can refer to an exhibit without naming the exhibit. Please do that.

All right, continue.

THE COURT: The point I am trying to make is

DIRECT EXAMINATION

BY MR. MORRIS CONTINUED:

Q Mr. Fried, I show you defendant's exhibit D, the so-called Badillo statement, dated June 22, 1962, and ask if you are familiar with that document.

A I am.

Q I also refer you to plaintiff's exhibit 1, the Wagner statement, and ask if you are familiar with that statement.

A I am.

Q I would ask you to tell the court the circumstances and the situation with respect to the number of units of low income housing in the West Side Urban Renewal Area at the time that the final plan was approved in 1962 and how these two statements relate to that.

THE COURT: By "two statements," you mean?

MR. MORRIS: The two exhibits, plaintiff's exhibit one and defendant's exhibit D.

A Well, plaintiff's exhibit 8, which is the final plan as approved by the City Planning Commission, called for, within the planning considerations, the number of 1, 630 units of low income housing. The final plan, as submitted to the Board of Estimate, which is plaintiff's exhibit 9, does not contain any figure at all.

that.

There was discussion at about the time of the presentation of the final plan to the Board of Estimate, and a report was repared by the then Commissioner of Relocation, which is defendant's exhibit D.

Now, this report says that much more than the 1,630 units called for in the final plan, which is plaintiff's exhibit 8, is needed. And he said, and I will quote as soon as I find it -- I quote from page 7 of defendant's exhibit D:

"In addition to the 2500 low rent apartments, about 1000 more apartments will be provided in low rent housing by building additions to existing projects, rehabilitating brownstones, and as a result of turnover and existing low rent public housing in the vicinity."

Earlier, on page 7, he says:

"The mayor announced yesterday that 2500 low rent apartments are to be provided both within the site and in the area adjacent to and surrounding the site. These 2500 units will include apartments in new public housing projects, in rehabilitated brownstone structures, and in middle income developments where 20 percent of the apartments will have rents and carrying charges comparable to rates in public housing. Previously only 15 percent of the apartments were to be low rent. The mayor yesterday directed the Housing and Redevelopment Board to increase this proportion to 20 percent."

Q Was there discussion by your Board with the Board of Estimate with respect to the figures that were finally arrived at with respect to the number of units of low income housing in the project?

A Well, the mayor --

MR. LAND: Objection to the question. That has not been established yet, your Honor.

MR. MORRIS: I am asking him.

THE COURT: No, he says that your question embodies an alleged factual situation which has not been established.

MR. MORRIS: All right. I will rephrase the question.

THE COURT: All right.

Q Mr. Fried, were there discussions at or about this time in June of 1962 of defendant's exhibit D and plaintiff's exhibit 1 with respect to the number of units of low income housing to be prepared in connection with the plan?

A There were.

Q Would you tell us what those conversations were and who they were with?

A They were the three then members of the Housing and Redevelopment Board of which I was one.

Q Who were the other members?

A At that time the chairman was Milton Mollen, and

I don't remember the third member because there was a turnover all along.

Q Was it Robert Weaver?

A No, Robert Weaver was in the original, and he had already left. It may have been Earle Brown.

Also, Mr. Felt was part of the discussions; Commissioner Badillo was part of the discussions.

Q What role did Mr. Felt occupy at that time?

A Chairman of the City Planning Commission. And also chief advisor to the mayor on matters pertaining to housing, urban renewal and planning and zoning.

Q Who else was these discussions with? Mr. Badillo?

A I mentioned Mr. Badillo, who was then Commissioner of Relocation.

Q Would you tell us what those discussions were?

A There had been discussions by Mr. Mollen and Mr. Badillo with various people within the community, and they came back and told us that there was a demand by community groups, and in Mr. Badillo's opinion there was a need for a number of units in excess of the 1,630 which were contained within the plan.

There had also been discussions with people who had already bought brownstones outside of the urban renewal process, and people who were interested in investing within

get that finished and turn it over to Mr. Morris, so that

the area, and that it was felt that the number of 2500 units of low income housing was the figure which would adequately provide for the people who had to be relocated and also would be acceptable to the remainder of the interests who were interested in maintaining an integrated, balanced community.

So that it was generally accepted as 2500, or in the vicinity thereof, because I think the mayor's statement was 2,465.

Q Are you referring to plaintiff's exhibit 1, the mayor's statement?

A Plaintiff's exhibit 1.

Q Would you tell us what the figure is in the mayor's statement, plaintiff's exhibit 1? I think it was the second page.

A 2,465 units.

So that there was no set definite figure of 2500; it was in the vicinity of that.

Q Of 2500.

A And it was deemed --

THE COURT: Answer the question of 2500.

A In the vicinity of 2500.

Q What was the effect of that figure?

A It was deemed that that would be a figure which would adequately take care of the relocation needs if we gave

THE COURT: Certainly.

priority to other projects within the West Side on turnover, and that this would be a number which would not violate the plans chances of success.

Q Were there subsequent reaffirmations of that figure of 2500 units?

A There were.

Q Was that done repeatedly?

A Yes.

Q I show --

THE COURT: When you say "affirmations" what do you mean?

MR. MORRIS: Restatements of the same figure of $2500.

THE COURT: Yes. In what form? You mean official --

THE WITNESS: Official statements to the Board of Estimate.

THE COURT: I see.

Q I show you plaintiff's exhibit 2 and plaintiff's exhibit 3 and plaintiff's exhibit 4 and ask if these are the reaffirmations to which you referred in your testimony?

A Plaintiff's exhibit --

THE COURT: Take your time.

A Plaintiff's exhibit 2, which is a statement by Jason R. Nathan, who was Chairman of the Housing and Redevelop-

becoming sponsors of the various sites in the applications

ment Board on Friday, December 9, 1966, before the Board of Estimate, it is reaffirmed that the city's commitment is 2500 units.

THE COURT: Why don't you just keep them before you? Because you may have other reference to them. All right.

A Plaintiff's exhibit 3 is a letter from the Director of the West Side Project, addressed to Mr. Roger Starr of the Citizens Housing and Planning Council, and dated October 6, 1967; is a further reaffirmation to carry out the city's promise to provide 2500 low income housing units.

THE COURT: Who transmitted that?

A C. R. van de Velde, director of the West Side Project employed by the Housing and Development Administration.

Q That was the administration of which you were a member; is that right?

A I was a deputy commissioner of that, yes.

Plaintiff's Exhibit 4, dated October 25, 1967, is a statement by Jason R. Nathan, administrator of the Housing and Development Administration before the Board of Estimate of the City of New York --

Q Dated what?

A I mentioned, dated October 25, 1967, and I quote, "Five years" --

THE COURT: Page?

A Page 1.

"Five years the City made a committment to build 2500 units of low-income housing in the Upper West Side. This committment, although a difficult one, was reaffirmed before this body last December when I appeared before you on another matter within the West Side Project."

I now quote from page 3.

THE COURT: Of that same exhibit?

A Of the same exhibit.

"The most important results that housing for

litigation anymore" and none of this business of surprise

low-income families will be in ample supply. There will be enough not only to meet the needs of the residents of the neighborhood who must be relocated, but to fulfill the total commitment of 2500 units to which the City is pledged."

Q Mr. Fried, let us proceed to theperiod subsequent to 1962, when the final plan was approved by the various governmental agencies. Was the final plan subsequently approved by the federal government aswell?

A It was.

Q Did there come a time when title to the project area vested in the City?

A Yes.

Q Could you tell us about when that was? Was that approximately 1963?

A '62 or 3.

Q '62 or 3?

A Yes.

Q Yes. Now, subsequent to that time, was a brochure prepared by the Housing and Redevelopment Board with respect to the West Side Urban Renewal area describing the area and the conditions and circumstances involved in the urban renewal plan?

A There was.

Q I show you --

Q Mr. Fried, subsequent to 1963 or at about that

THE COURT: What was the purpose of the issuance?

A To acquaint people who might be interested in locating within the area, becoming a developer within the area.

THE COURT: What was being contemplated?

A Contemplated as the reengineering of that area.

THE COURT: Thank you.

Q I show you this brochure and ask if this is the brochure to which you refer?

A It is.

MR. MORRIS: I offer it in evidence.

THE COURT: Show it to counsel.

MR. GOLD: Your Honor, a few minutes? This is one document I have never seen.

THE COURT: Of course. Take you time, counsellor.

(Pause.)

MR. LAND: Your Honor, could we have a voir dire on this document before it is introduced?

THE COURT: Certainly.

First let it be marked for identification. Let the record show that counsel has spent the last five or six minutes examining it, as they have a perfect right to.

(Plaintiff's Exhibit 10 marked for identification.)

THE COURT: 10 for identification has been examined

THE WITNESS: Activities within the Urban Renewal

by counsel and he requests a voir dire, which is grantedwith regard to the Exhibit 10 for identification. All right, Mr. Land.

VOIR DIRE EXAMINATION

BY MR. LAND:

Q Mr. Fried, I hand you Plaintiff's Exhibit 10 for identification. Do you know when that document was published?

A I presume it was published sometime in --

THE COURT: No, he didn't ask that.

A Exactly? No, sir.

THE COURT: Next question.

Q Do you know approximately when it was published?

A I believe in 1963.

Q Was this published by your agency?

THE COURT: Or rather, would you frame it, by whom was it published, if you know?

A The Housing and Redevelopment Board.

THE COURT: At that time you were connected therewith?

A Yes, sir.

Q What was the purpose of this brochure?

A Publicizing what was expected.

THE COURT: I asked him that.

THE WITNESS: I know we started to distribute

MR. LAND: Yes, I want to go into it a little more in depth, if I could.

THE COURT: Go into it and don't repeat my question.

A It is indicated by some of the headings.

Q Was this brochure printed in great volume so that anyone who might be interested in locating the area could obtain one of these brochures for their own personal use and to see what the City was planning for the area?

A I have already testified that that was one of the purposes.

THE COURT: It still doesn't answer. Mr. Land wants to know, was it published in large quantities so that the demand of those for whom it was intended could be met? That's all he asks.

A Yes.

THE COURT: All right.

MR. LAND: Okay. Excuse me one moment, your Honor.

THE COURT: Surely.

Q Was this brochure republished after 1963?

A I believe it was republished at a later stage, and contained within it some of the proposals by some of the prospective developers at thattime.

Q Do you know the approximate dates of its republication and the amendments you referred to?

A I don't sir.

Q As to this particular brochure, do you know how many were published?

A I don't.

Q Do you know whether in fact people who were interested in moving into the area did obtain this brochure and read it and depend upon it?

A Personally, I don't.

Q Do you have with you copies of the supplements to this brochure that were published?

A I don't. They should be in the files of the Housing Development Administration.

THE COURT: Did they alter what appears in 10 for identification or did they add to it?

A I would not know, sir.

THE COURT: All right.

MR. LAND: Your Honor, we have no objection to this brochure but with the caveat thatit may not accurately reflect the current position as to the plan, nor does it of necessity reflect -- or does it evidence that people relied upon it. I think perhaps it should speak for itself as to a view of the West Side Urban Renewal Plan given by

the board and should be taken just for that limited purpose.

THE COURT: Well, I will take it for that limited purpose, as you put it, and so consider it unless there is something to the contrary before we are through taking evidence.

MR. LAND: Okay.

THE COURT: Mark it in evidence, then, Mr. Clerk. It is 10 in evidence.

MR. LAND: Thank you very much.

THE COURT: Not at all.

(Plaintiff's Exhibit 10 received in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. MORRIS:

Q Did there come a time, Commissioner Fried, when the Urban Renewal Plan, as approved by the Board of Estimate in 1962, and by the federal government and all the other authorities, was amended?

A Yes.

Q Would you tell us what happened with respect to the amendment of the plan?

THE COURT: I'm sorry, Mr. Morris. It's my fault. There has been reference with regard to 10 that later on it was either modified or the accent, as I gather, was it was supplemented by the statements of real estate operators.

their sponsorship of a project in the area?

A I really don't recall, your Honor.

THE COURT: The point I am trying to make is please, please, please, don't leave anything hanging. There should be a definite answer on a think like that. I shouldn't have to wait for tomorrow or some other day to find out whether 10 really has any meanin or was it nullified by a subsequent document.

I would like to have all this knitted together. That is what I had to do when I was doing these things. I don't want to have to carry it in my head. I want to know that here it is, you can get that and by golly, I used to get papers that were dead for 40 years, buried under 50 tons of debris. A think like this can either exist or it doesn't exist. I ought to have a statement on the record.

MR. MORRIS: Your Honor, the statement referring to Plaintiff's Exhibit 10 relates to the brochure which was published by the Housing and Redevelopment Board and circulated, as Commissioner Fried has testified.

THE COURT: Right.

MR. MORRIS: And that is the only document that we found in examining very carefully the City's records and the City's files which were made available to us by subpoena.

THECOURT: What does the witness mean?

MR. MORRIS: He said he recalls possibly some later

modification but we have been unable to find anything like that.

As far as we know, there was nosuch.

MR. LAND: Excuse me, your Honor, may I --

THE COURT: Wait a minute.

Go ahead.

MR. MORRIS: My question was not addressed to the brochure, Plaintiff's Exhibit 10, at all. It was addressed to the final plan, Plaintiff's Exhibit 8, which was approved by the City Planning Commission, and Plaintiff's Exhibit 9, approved by the Board of Estimate, which is the basic plan itself, and not the brochure of the plan which is Plaintiff's Exhibit 10.

THE COURT: Well, you certainly had a purpose in putting 10 into evidence.

MR. MORRIS: I did.

THE COURT: You wanted to show that this was available to all and sundry in connection with the proposed development, is that not so?

MR. MORRIS: That is correct.

THE COURT: You weren't idling away, here, were you?

MR. MORRIS: I was not.

THE COURT: So, 10 had a purpose.

MR. MORRIS: It did.

THE COURT: The witness then added something and all I am saying is, please, either straighten out the witness now, some other time or nullify what he said or I will feel that there is a document somewhere in existence that diminishes, supplements or does something with regard to 10 because he is the one who mentioned it.

He may be in error; I don't know.

All I am saying is, don't keep these things uncertain.

MR. MORRIS: Your Honor, there was no uncertainty. We examined the records very carefully and found only one brochure and no other brochure has appeared.

THE COURT: Mr. Morris, why do you argue with me? You are an intelligen lawyer.

Is it not true that this witness testified --

MR. MORRIS: He did.

THE COURT: Then say, "Judge, I see your point and I will try to satisfy you," but you still go on arguing with me.

MR. MORRIS: I am not arguing.

THE COURT: I saw a topic for discussion in a church about a week ago: When a man begins to admit that he is at fault, he then is beginning to be right. Okay?

All right.

There is no pride of authorship. A judge says very plainly, "Look, I don't want the record hanging loosely" and the judge tells why, so you go ahead and satisfy the judge. That's all you have to do.

BY MR. MORRIS:

Q Mr. Fried, you testified there were amendments or changes or modifications to the brochure which is Plaintiff's Exhibit 10. Would you tell us what you know about that?

A My recollection is that we ran out of copies because of the demand and it was reprinted.

Now, whether the reprint was changed in any respect, I do not know.

THE COURT: Mr. Fried, would you, only because I attach importance to these things as a result of my own experiences in cases over the years, would you be good enough, pursuant to a direction from me to you as a witness, to look for that sort of thing and see whether you can find anything that relates to it after you leave this courthouse?

THE WITNESS: Sir, I will request the Housing and Development --

THE COURT: I don't care what you do. You know how to go about it. All I am saying is, will you please

get that finished and turn it over to Mr. Morris, so that he can make a report to me as to what you have found, if anything.

THE WITNESS: I will, sir.

THE COURT: Thank you.

Q Now, Mr. Fried, was there an amendment to the final plan, the final Urban Renewal Plan, which was approved by the Board of Estimate in accordance with Plaintiff's Exhibit 9?

A There was.

Q Were there several amendments, in fact?

A There were.

Q I show you the xerox copy of public hearings before the City Planning Commission, C.P. No. 18-110, August 20, 1963, and ask if thatrefers to the amendment to the Urban Renewal Plan to which you referred.

A It does.

MR. MORRIS: I offer it in evidence.

THE COURT: Show it to counsel.

MR. GOLD: I have no objection to this, your Honor.

THE COURT: Very well. Mark it in evidence.

(Plaintiff's Exhibit 11 received in evidence.)

MR. MORRIS: May I confer with Mr. Gold for a moment, yourHonor?

THE COURT: Certainly.

(Pause.)

MR. MORRIS: Your Honor, my next question would address itself to the approval of the first amendment to the final plan by the Board of Estimate. We do not have that document here but Mr. Gold has arranged to get it for us and I ask leave of the Court to be permitted to submit thatdocument at a later date.

THE COURT: All right. But make that a very sparing experience, will you?

MR. MORRIS: Yes.

Q At or about this time, which would be 1963, the time of the first plan amendment, was there an application made by Trinity School for sponsorship of Site 24 in the West Side Urban Renewal area?

A Yes.

Q Did you participate in any way in that application for sponsorship?

A Not in the application but in the disposition of it, I did.

Q Would you tell us what occurred with respect to that application of Trinity?

A The Housing and Redevelopment Board had widespread advertisements asking for people who were interested in

becoming sponsors of the various sites to file applications with the Housing and Redevelopment Board, specifying the site in which they were interested or what they proposed to do, what their qualifications were. Trinity was one of those.

These applications were distributed to our staff, the legal section, planning section, financial section.

Reports were then received before the Board with recommendations by staff as to whom should be awarded the sponsorship. Trinity was awarded sponsorship of this particular site.

Q I show you a letter from Trinity School to the Houseing and Development Board dated December 18, 1963 and ask if this is the application made by Trinity for sponsorship to your board.

A I believe this is it.

MR. MORRIS: I offer it in evidence.

THE COURT: Show it to counsel.

MR. GOLD: Your Honor, might I just ask Mr. Morris, is this a document that came from the City's files?

MR. MORRIS: No. It is a document that came from Trinity's files.

MR. GOLD: The stipulation, your Honor, that we spoke of yesterday or Mr. Morris alluded to yesterday that

MR. GOLD: Your Honor, I have no objection to the

arose out of our meeting, all of us, was with reference, I believe, to documents that came from official government files as well as the documents that were attached to the papers on the preliminary injunction.

This document does not fall within those categories and I would think that Mr. Morris should lay a foundation, it seems to me, or produce the original of the document.

There also is some indication here that there are attachments that came with this and we don't have those attachments.

THE COURT: What do you say to that, Mr. Morris?

MR. MORRIS: Your Honor, I can do on e of two things -- I can either ask this witness whether he received th e letter or, I am producing Mr. Elliott Lumbard of the Trinity School, who wrote this letter, and he will be produced as a witness later on.

THE COURT: We will take it temporarily and entertain your motion to strike if it is not connected up. Is that acceptable?

MR. GOLD: That's acceptable, your Honor.

THE COURT: Very well.

Mr. Clerk.

(Plaintiff's Exhibit 12 received in evidence.)

THE COURT: And since there are no real secrets in

THE COURT: 14A.

litigation anymore and none of this business of surprise attack and all that stuff and nonsense, will you be good enough, gentlemen, not to hold me up with regard to admission of documents?

They have a perfect right to examine them and I think it can be curtailed by just giving it to them in advance. Show them what you intend to present and whether they know it backwards or forwards or whether they have never seen it before, or you don't want them to know it, all that business, forget it; just let them look at it, so thatthey can study it in their time, not on the time of the Courtwhen we are really pressed to get as much evidence in as we can.

Try to do that, if you please, and try to do it and avoid these delays.

MR. MORRIS: Yes, your Honor.

BY MR. MORRIS:

Q Mr. Fried, subsequent to 1963 or at about that time, did your Housing and Redevelopment Board also publish a booklet relating to rehabilitation in the West Side Urban Renewal Area; a brochure?

A I believe we did.

Q I show you this brochure and ask you if that is the one?

A Yes, it is.

Q And that brochure was prepared in the same manner and for the same purpose as the other brochure which is marked Plaintiff's exhibit 10 in evidence, is that correct?

A Well, this related exclusively to rehabilitation of brownstones.

Q Would you tell us the difference between plaintiff's exhibit 10 and this exhibit, which I have just asked you about.

A Well, plaintiff's exhibit 10 related to all types of activities within the area.

This exhibit, which is not marked yet --

THE COURT: What is the legend on it?

THE WITNESS: Procedures for the Purchase of City Owned Brownstones for Rehabilitation (FHA Section 220, Mortgage Insurance).

THE COURT: That related to just a section of --

number of sites of middle-income housing had closed con-

THE WITNESS: Activities within the Urban Renewal Area.

Q And those activities related to the rehabilitation of the brownstones, is that right?

A Right.

Q And that was published by your board?

A Yes.

Q Was it circulated to people interested in rehabilitation in the West Side area?

A It was.

Q Over what period of time would you say that was circulated, approximately?

A I do not know.

Q But can you give us an approximation?

A If they lasted that long, it would have been for two years.

Q Two years?

A They may still have some.

THE COURT: Motion to strike is granted.

MR. LAND: Thankyou, your Honor.

THE COURT: He wants to know, can you tell us. If you can't, do not give us guesses; we don't want that. All right?

Have you anything definite?

Q Proceed, Mr. Fried.

THE WITNESS: I know we started to distribute them at the time this was printed.

THE COURT: Which is what?

THE WITNESS: Unfortunately, this is not dated, your Honor.

THE COURT: Your best memory.

THE WITNESS: They would have been distributed as long as we had copies of them.

THE COURT: That is the best you can answer on it. Very well.

MR. MORRIS: I offer it in evidence.

THE COURT: Very well.

MR. LAND: Your Honor, we object to the introduction of this booklet on the ground of relevancy.

THE COURT: In view of that, will you mark it for identification, Mr. Clerk. We have been talking in the last few minutes about exhibit 11, is it?

THE CLERK: Plaintiff's exhibit 13.

THE COURT: Plaintiff's exhibit 13 for identification, then.

xx (Plaintiff's exhibit 13 marked for identification.)

THE COURT: Now, you say you object. On what ground?

MR. LAND: The matter of relevancy.

Unless it is established that it was contained in the booklet. It may be relevant to the issues on trial. Otherwise, we see no need for introduction.

MR. MORRIS: My answer is that the intervenors in this case, Hudgins and Karlan are both the owners of brownstones and rehabilitated brownstones in accordance with the provisions of that brochure and that they proceeded on that basis.

This governed their arrangements and it relates directly to their interest in the case and their procedure before this court.

MR. LAND: Your Honor, there is no proof of the statements Mr. Morris makes, whether or not Hudgins and Karlan relied upon that brochure, whether or not that brochure containes all the requirements in respect to brownstones --

THE COURT: We will take it a step at a time.

13 for identification will be received as 13 in evidence, with a motion to strike if it is not connected up.

MR. LAND: Thank you, your Honor.

(Plaintiff's exhibit 13 received in evidence.)

THE COURT: Make your own notes on that, gentlemen, because if you do not make your motion to strike it stays; you understand that?

xx

MR. LAND: In connection with motions to strike, your Honor.

THE COURT: Yes, sir.

MR. LAND: This may be some groundwork. Shall we make that motion at the conclusion of the trial?

THE COURT: Whenever you feel you are wanted in doing it.

MR. LAND: Or shall we do it in the post-trial memorandums which we all will submit to the court? Shall we do it at that point?

THE COURT: No. I would rather make it at the first opportunity and that is in the lap of the Gods. You don't know what will happen in a case like this, and your guess is as good as mine.

In the meantime, to encourage you, I have sent for the status of the all important event in the local area and that is how the Mets are doing and I shall inform you in due time.

What else have you got? Next question?

Q Mr. Fried, did there come a time when the Trinity School was approved as the sponsor of site 24?

A There was.

Q In connection with the approval of Trinity School, was a meeting held by your board at which you were present

with the representatives of Trinity School with respect to their sponsorship of a project in the area?

A I don't recall whether we, as a board, met with them.

Q Well, do you recall any meeting with them with respect to their sponsorship of the project?

A I personally met with them on several occasions, they or their representatives, in developing the project which was subsequently built and financed by the City of New York.

Q Would you tell us what was said with respect to their sponsorship of the project and the selection by the board of them as sponsors.

A Well, they were advised that they were sponsors. They were asked to have their architects begin preparing an architectural plan; they were asked to instruct their attorneys to begin processing with us, so that when the plans were finished, we could negotiate a mortgage loan and the building could be built.

MR. GOLD: Your Honor, I object to this line of testimony unless we get some dates as to the meetings.

THE COURT: Yes. You are entitled to the details, so you can meet the testimony.

Go ahead, Mr. Morris.

Q Mr. Fried, I show you the agreement between the City of New York and Trinity Episcopal Schools Corporation, dated June 20, 1968, and ask if this is the agreement with respect to Trinity sponsorship of the project.

A It is.

Q Is that the original? If you look at the clip there.

A Yes, it is.

Q Signed by the mayor's office?

A Deputy Mayor Robert Sweet, with the seal of the City -- no. It's the seal of the school and the seal of the city.

Q Is that the original agreement between Trinity School for sponsorship of the project?

A Yes.

MR. MORRIS: I offer it in evidence.

THE COURT: Any objection, gentlemen?

MR. GOLD: I have no objection.

THE COURT: No objection. Mark it in evidence.

(Plaintiff's exhibit 14 received in evidence.)

xx

Q Did there come a time in 1964 when there was a second amendment to the Urban Renewal Plan?

A There did.

Q And I show you the city planning commission approval

of the second amended plan, dated October 14, 1964, and ask if this is the document which refers to that approval?

A Yes.

MR. MORRIS: I offer it in evidence.

THE COURT: Show it to counsel.

MR. GOLD: No objection, your Honor.

xx (Plaintiff's exhibit 15 received in evidence.)

Q Mr. Fried, I show you Board of Estimate resolution dated December 3, 1964, and ask if this is the Board of Estimate resolution approving the second amendment to the Urban Renewal Plan?

A It is.

MR. MORRIS: I offer it in evidence.

THE COURT: Show it to counsel.

MR. GOLD: No objection, your Honor.

THE COURT: Received. Mark it.

xx (Plaintiff's exhibit 16 received in evidence.)

THE COURT: Gentlemen, I am about to take a plea in a criminal case and so, we will take a short recess. I will be right back after the pleading.

It won't take more than five or ten minutes.

(Recess.)

THE COURT: All right, let us proceed.

MR. MORRIS: Your Honor, Mr. Land has made a suggestion which might be helpful to all of us. I have a list of the documents that I intend to introduce in evidence in addition to those already in, and he suggests that we go through the testimony of Mr. Fried and give them all of the documents in a group, let them go over it and make objection to any they see fit to object to, and all the rest will go into evidence and be marked as exhibits accordingly.

THE COURT: Yes, but are you going to take the testimony of this witness with reference to those exhibits? If you are, then I would want those exhibits referred to by him right there and then, named.

You see, counsel, get the idea: We are going to look at these things, we are going to look at the minutes. Suppose there is an appeal? The court has the right and I have heard them say this over and over again, to know what the witness was talking about. They do not want to have to go back 50 pages, and they are annoyed at the trial judge for not nailing it down. And I agree with them. What is this business of leaving it all loose and uncertain? It ought to be nailed down. What are you talking about? Which document? et cetera.

So that is my job. I have got to see that it is

done. So if the witness' testimony is going to embrace these exhibits, I am afraid that is the only way you can do it. Or, take him to some other ground and put him back after your opponents have examined the exhibits and record their objection or non-objection thereto. That is the only way I know.

MR. MORRIS: Then I will proceed as I have.

THE COURT: I think so.

MR. MORRIS: Thanks, Judge.

May I have a moment?

THE COURT: Yes, sir.

(Pause.)

BY MR. MORRIS:

Q Mr. Fried, I show you the City Planning Commission resolution relating to the third amended plan, and askif this is the third amendment to the plan on September 15, 1965.

A It is.

MR. MORRIS: I offer it in evidence.

MR. GOLD: Your Honor, there is no objection. I would just like to clarify the record as to the characterization of the exhibit.

I believe Mr. Morris referred to it as the third amended plan. It is the city planning commission report with respect to the third amended plan.

THE COURT: Yes, that is the preferable way.

Very well.

No objection?

MR. GOLD: No objection.

THE COURT: Mark it in evidence.

(Plaintiff's exhibit 17 received in evidence.)

xx

Q Mr. Fried, I show you a copy of Board of Estimate resolution of October 14, 1965, related to the third amendment of the Urban Renewal Plan, and ask if this is the resolution.

A It is.

MR. MORRIS: I offer it in evidence.

MR. GOLD: No objection, your Honor.

THE COURT: Received.

(Plaintiff's exhibit 18 received in evidence.)

xx

THE COURT: Of course, you understand if there are a group of exhibits that speak for themselves and do not need elucidating by any witness and you all agree on them, they can be offered in evidence without much ado. Just have them marked.

Q Mr. Fried, was a redevelopment areas land use map prepared by your agency in connection with the West Side Urban Renewal Plan?

A There was.

Q I show you this print of such a map, dated March, 1966 --

THE COURT: Just print. Because you are defining it is such a map. You are going to ask him if it is such a map. I show you this print of a map --

Q -- of a map, dated March 1966, and ask if this is a print of the West Side Urban Renewal Plan map as of that date?

THE COURT: Or rather what is it, really, rather than suggesting.

What is it, Mr. Fried?

A This purports to be a map of the area containing the land use of the various sites within the area that are part of the plan.

THE COURT: Was it issued by your office?

A It was issued by our office and this is the latest revision as of 1966.

THE COURT: Thank you, sir.

A It was originally issued in 1960.

MR. MORRIS: I offer it in evidence.

MR. GOLD: Your Honor, I have no objection to the fact that this is a map attached to the 1966 4th amended version of the plan. However, I see no reason why we should clutter the record with a document already in evidence as part of the Trinity contract with the City, which is Plaintiff's Exhibit No. 14. If I am correct, the same exact map --

MR. MORRIS: It is in there.

MR. GOLD: -- would be in that contract and there's no reason to be an extra exhibit.

MR. MORRIS: The only reason, your Honor, for my offering it, is this map is the basic map of the proposed redevelopment of the entire area, whereas the contents of the map in the contract are at page 900 in the contract, and would be very difficult to find, and since it is so important insofar as --

THE COURT: All right.

MR. MORRIS: I thought the separate exhibit would be desirable.

THE COURT: Is that 14, the contract?

MR. MORRIS: The contract is 14, yes, sir.

THE COURT: Mark the other 14A. That's all. That is just a convenience to the Court.

MR. MORRIS: Thank you.

think I ought to go in and see where it belongs, if it belongs

THE COURT: 14A.

(Plaintiff's Exhibit 14A received in evidence.)

THE COURT: All right. There it is.

Q Mr. Fried, was there a 4th amended plan, a 4th amendment to the Urban Renewal Plan?

A There was.

Q Was that approved by the City Planning Commission?

A It was.

Q I show you City Planning Commission Resolution September 7, 1966, and ask if this is the approval of the City Planning Commission to the 4th amendment to the Urban Renewal Plan.

A It is.

MR. MORRIS: I offer it in evidence.

MR. GOLD: No objection, your Honor.

THE COURT: Received. Mark it.

(Plaintiff's Exhibit 19 received in evidence.

THE COURT: Gentlemen, would you be good enough, just put your papers on the side for a minute and let these other attorneys come here. It won't take more than a few minutes. You remain right where you are. Give them a chance to operate.

(Recess.)

Q I show you City Planning Commission resolution,

BY MR. MORRIS:

Q Mr. Fried, I show you the Board of Estimate resolution dated December 4, 1966, regarding the 4th amendment of the Urban Renewal Plan for the West Side Urban Renewal area and ask if this is the resolution.

A It is.

MR. MORRIS: I offer it in evidence.

MR. GOLD: No objection, your Honor.

(Plaintiff's Exhibit 20 received in evidence.)

MR. GOLD: What's the date on that?

MR. MORRIS: December 9, 1966.

May I confer with counsel for a moment?

THE COURT: Yes, sir.

Q Mr. Fried, at or about June 20, 1968, when Plaintiff's Exhibit 14, Trinity contract, was executed, could you describe to the Court the situation that existed with respect to the West Side Urban Renewal area and what had occurred with respect to changes and new construction and rehabilitation in that area up to that time.

A Up to that time, a number of brownstones had been sold for rehabilitation. I think the rehabilitation on some of them had been completed.

There were at least two proposals to combine a number of brownstones into cooperatives. Sponsors on a

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: COURTLAND 7-4580

with respect to site 30; did I not?

number of sites of middle-income housing had closed contracts with the City and construction was either under way or had been completed --

Q Would you tell us in which areas of the West Side Urban Renewal area these occurred?

A 96th Street and shortly below that, probably between 93rd and 96th. Mostly on Columbus and on the side street of 96th and one on 97th between Columbus and Central Park West.

I believe also by that time some of the vest pocket public housing units either had been completed or were in the course of construction --

THE COURT: What do you mean by vest pocket? I don't get that.

THE WITNESS: Individual buildings, rather than a large project.

THE COURT: Thank you.

A Steven Wise I believe, was either completed or under construction and --

Q Would you tell us where Steven Wise is located with respect to the Trinity site?

A It is just below it, I believe.

Q Right across the street, isn't it?

A Yes.

Housing Authority?

Q Proceed, Mr. Fried.

A And I think some of the buildings had been rehabilitated by the Housing Authority for low-income tenants. I am not sure whether it was exactly finished or started by 1968.

Q Now, what occurred as a result of what you have just described with respect to the general situation in the area, the West Side Urban Renewal area?

A Well, the purposesof the Urban Renewal Plan were beginning to be achieved.

Q Would you tell us how they were beginning to be achieved? How, tangibly, was this being effected?

A Well, substantially, you had a considerable amount of relocation for blighted housing. You had demolition of those decrepit structures and you had new, better housing being completed and occupied both for low-income and middle-income families.

Q Did you have occasion to go into the area during this period of time?

A Certainly.

Q And was it physically evident to anyone walking into the area and looking at the area that this change had occurred?

A Yes.

Q What occurred subsequent to that? What was

Q And that was apparent?

A Yes.

Q Beginning in or about 1969, was there a situation developing with respect to the number of low-income housing units that were being built into the project?

MR. LAND: I object to the form of the question.

THE COURT: Objection sustained.

Q Was there any discussion at or about that time, subsequent to the execution of the Trinity contract, Plaintiff's Exhibit 14, on June 20, 1968, with respect to the introduction of more low-income housing units?

A I know there was a demand for an increased number because I was asked, as the Deputy Commissioner in charge of developing Mitchell - Lama sites, whether I could sacrifice some of the sites for public housing.

Q Was there subsequent discussion about introducing more low-income housing units to the site?

A That's right.

MR. LAND: More in relation to what figure.

Q More in relation to the 2500 that had been previously discussed.

A I can't say that I can add them up but the discussion was with respect to converting for review of some of the sites -- the previous plan had called for middle-income

housing -- to low-income housing which hadn't appeared in the previous plan.

Q Did you in fact prepare a memorandum on December 13, 1968, which you sent to Robert G. Hazen of the Housing Development Administration with respect to the introduction of additional low-income housing units?

A I did.

Q I show you this memorandum and ask if this is the memorandum which you prepared?

A It is.

MR. MORRIS: I offer it in evidence.

THE COURT: Show it to counsel.

MR. GOLD: No objections

(Plaintiff's Exhibit 21 received in evidence.)

Q I show you Plaintiff's Exhibit 21 and ask you to tell the Court the circumstances under which that memorandum was prepared.

A As part of the plan for achieving the 2500 units that the administrator, Mr. Hazen, had represented to the Board of Estimate would be achieved, it was necessary to increase the per centage of units within the middle-income housing projects made available for families of low-income and it was my responsibility in negotiating with these developers of middle-income housing to ask them to come in and

meet with them as a group and discuss with them increasing the number of low-rent units within the middle-income housing.

THE COURT: But such conversation from middle-income to low-income was in addition to the 2500 theretofore fixed?

THE WITNESS: No. It was within the 2500.

plan?

THE COURT: It was within it?

THE WITNESS: It was one of the ways of achieving the 2500.

THE COURT: Thank you.

A And I met with a great deal of opposition from these people and I sent a memo to my then superior, Mr. Hazen, advising of this fact.

THE COURT: And that is the exhibit?

THE WITNESS: This is the plaintiff's exhibit number 21.

Q In or about 1969, were there discussions relating to the introduction of more low income housing units into the area and did you have conversations with Mr. Ollinger of the agency, the Housing Development Administration, with respect to that.

MR. LAND: I object to the form because it relates to more in relation to some figure and we haven't stipulated what figure he wants it more in relation to.

MR. MORRIS: The 2500 units.

THE COURT: Well, I think you either withdraw your question and reframe it or let me make a ruling. Which do you want?

MR. MORRIS: I'll withdraw it.

THE COURT: All right.

Q During the period of in or about 1969 or a period subsequent to the memorandum, plaintiff's exhibit 21, were there conversations in the Housing Development Administration with respect to an increase in the number of low income units in excess of the 2500 that had been previously discussed?

A Well, an issue arose a couple of years later at which time I was a member of the Housing Authority --

MR. GOLD: May we have a date, please.

THE COURT: Yes, indeed. Will you fix that.

A It was sometime in 1971.

THE COURT: Was that the first time that your attention was called to the subject matter of the last question pending before you?

THE WITNESS: Yes, sir.

THE COURT: All right.

A (Continuing) It arose as a result of the occupation of the buildings on site 30 by squatters and an issue arose particularly in an interagency meeting as to what should be done with the squatters and with the particular site.

At that time, there was a question raised as to whether or not the use of site 30 should be converted from middle income to low rent housing.

That was sometime in 1971 and, in time, I related to the occupancy of the building by the squatters.

MR. GOLD: May I ask that the record show which agencies were involved in the interagency conference that was specified to?

THE COURT: Will you please bring that out, Mr. Morris.

Q Would you tell us which agencies?

A My recollection is that it was before the Housing Policy Board, which consists of the Planning Commission, the Housing and Development Administration, the Housing Authority, Corporation Council, Bureau of the Budget.

THE COURT: Well, for my edification, and this may sound as though I do not know what is going on -- I think I do but I don't quite get the significance of your last answer -- how would the squatters situation be alleviated by what you said? I don't quite understand how that would follow.

THE WITNESS: Well, by what actually happened, sir.

It is my understanding and it was reported to us by the people from the housing development administration that when they promised the squatters that site 30 would be converted from middle income to low rent housing, and that they would have rights of relocation, they then agreed to move out, some of them.

Then, the problem was reduced to a manageable size, so that the balance of them could be moved out.

THE COURT: Thank you.

Q Now, can you tell us about when the squatters first moved into the area?

A I do not know, sir.

Q Was the Stryker Bay group involved in these discussions at or about that time?

A Not in those that I attended.

Q Were you involved in any way in connection with the conversion of site four or would you tell us how site four was originally scheduled in the West Side Urban Renewal Plan?

A Originally, site four was for fully tax paying housing.

Q Was that changed, subsequently?

A Subsequently, by one of the amendments that were mentioned, it was changed to middle income.

Q Did anything happen subsequent to that as to other changes?

A Yes. Subsequently, it was changed to public housing.

Q Would you tell us whether you had anything to do with the activity with respect to the proposed change of site four to public housing?

A I did not.

Q Were you with the Authority when that occurred?

A I had resigned from the Housing Development Administration effective as of July.

I went to Europe to visit various cities and housing authorities and was not sworn in until August 17 of 1970 at the Housing Authority.

THE COURT: Mr. Morris, I am sorry to do this but this is the way things go in a courtroom sometimes.

Won't you take a seat.

(Recess.)

THE COURT: All right, gentlemen. I am sorry. We have got to go on.

BY MR. MORRIS:

Q Mr. Fried, I show you final plan, Urban Renewal Plan, dated November 1960, and ask if this is the Urban Renewal Plan itself?

A Yes.

MR. MORRIS: I offer it in evidence.

THE COURT: Show it to counsel.

MR.MORRIS: I withdraw this document at this time, your Honor.

THE COURT: All right. In that event it will have tobe marked as an exhibit for identification.

MR. MORRIS: It would be number 22 for identification.

xx (Plaintiff's exhibit 22 marked for identification.)

THE COURT: Next question.

Q Mr. Fried, I show you a Plan and Project, New York City Housing Authority, submission to the City Planning Commission and the Board of Estimate of Plan and Project for a public housing project, West Side Urban Ranewal Area, site 4, dated May 7, 1970, and ask if this relates to site 4 which you testified to before.

A Well, I was not a member of the housing authority

at the time, but I have seen this in our files subsequent to the approval.

THE COURT: As you look at it, would you say yes or no to counsel's question or can't you answer it?

A Yes.

THE COURT: The answer is yes. All right.

MR. MORRIS: I offer it in evidence.

MR. GOLD: No objection, your Honor.

THE COURT: 23 in evidence.

(Plaintiff's exhibit 23 received in evidence.)

Q I show you, Commissioner, the City Planning Commission approval of the conversion of site four, dated May 7, 1970, and ask if this is the City Planning Commission approval of the conversion of site four of the public housing?

A It is.

MR. MORRIS: I offer it in evidence.

MR. LAND: Your Honor, we object to the introduction of evidence with respect to site four unless there is first an offer of proof made that site four will be built upon. It is our understanding there are no monies for site four, that it will not be built upon.

THE COURT: I will receive it as a part of the total picture with a motion to strike at the appropriate time. I cannot determine so vital a thing as that right now. I

think I ought to go in and see where it belongs, if it belongs at all.

MR. GOLD: No objection, your Honor.

THE COURT: In the light of the total picture that the evidence presents, that the total evidence presents.

That is 24 in evidence.

xx (Plaintiff's exhibit 24 in evidence.)

THE COURT: That is not to indicate that I will go far afield. But I will try to keep it within the relevant areas of our case.

Q Was there a similar action taken by the various city agencies with respect to the conversion of site 30 from middle income housing to low income housing?

A Similar to what, sir?

Q A proposal for the conversion of site 30 from middle income house to low income housing.

A There was.

Q I show you this Plan and Project of the New York City Housing Authority, dated June 7, 1971, relating to site 30, and ask if this is the proposal.

A It is.

MR. MORRIS: I offer it in evidence.

MR. GOLD: No objection, your Honor.

xx (Plaintiff's exhibit 25 received in evidence.)

Q I show you City Planning Commission resolution, dated August 11, 1971, relating to the approval of the City Planning Commission of the conversion of site 30 to low income public housing, and ask if that is the resolution of the City Planning Commission.

A It is.

MR. MORRIS: I offer it in evidence.

MR. GOLD: No objection, your Honor.

THE COURT: Received. Mark it in evidence, please.

xx (Plaintiff's exhibit 26 received in evidence.)

Q I show you this resolution of Board of Estimate, dated August 12, 1971, with respect to the conversion of site 30 to low income public housing, and ask if that is a copy of the Board of Estimate resolution.

A What date did you give?

Q November 11, 1971.

A It seems to be August.

Q Or whatever the date is. What is the date on the exhibit?

A August 19.

MR. GOLD: Your Honor, perhaps I could be helpful.

Mr. Morris, I think I gave Mr. Baker this morning a copy of the certified resolution of the Board of Estimate

with respect to site 30; did I not?

THE WITNESS: That's the calendar items.

MR. MORRIS: Yes, this is the calendar item, which is August 19. The date I gave you is the date of the Board of Estimate Approval, November 11.

MR. GOLD: For the ease of the court -- do you have it?

MR. MORRIS: Yes, I have it.

I am sorry, your Honor.

THE COURT: That is all right.

MR. MORRIS: There was a little confusion.

THE COURT: Are you withdrawing the last question?

MR. MORRIS: I am withdrawing the last question.

THE COURT: All right.

Q I now ask you, Commissioner Fried, whether this is a true copy of the resolution of the Board of Estimate, dated November 11, 1961, relating to the conversion of site 30 to low income public housing.

A It is.

MR. MORRIS: I offer it in evidence.

MR. GOLD: No objection.

THE COURT: Received.

xx (Plaintiff's exhibit 27 received in evidence.)

Q. Commissioner Fried, when did you go with the City

Housing Authority?

A August 17, 1970.

Q Would you tell us what happened with respect to the conversions of sites 4 and 30 from middle income housing, as originally provided in the Urban Renewal Plan, the low income housing?

A I did not participate with respect to site four. With respect to site 30, I was involved, and there was several discussions within the housing policy board, and in inter-agency discussions between New York City Housing Authority and the New York City Housing and Development Administration.

The proposal was made to convert the reuse of the site 30 from middle income to low rent housing in order to sacrifice demands that were being made on behalf of the squatters who had occupied site 30.

There were differences of opinion within the two agencies. The official position of the Housing Authority was that if it was the ultimate decision of the Board of Estimate that site 30 should be used for low rent public housing, then we would prepare a plan and project, present it to the Board of Estimate, and present it to the Federal Department of Housing and Urban Development for funding, if it should ultimately be decided that that were to be the use.

THE COURT: So what are you doing, withdrawing it?

Q What occurred subsequent to that? What was decided?

A It was decided to convert the use from middle-income housing to low-rent housing.

Q Did you participate in that discussion as a member of the authority?

A I did in some of them.

Q What's that?

A I did in some of them.

THE COURT: Would you give us the dates, please, Mr. Examiner? Approximate.

A Probably the early summer of 1971; spring and summer of '71.

Q After approval, after the submission to the Board of Estimate and the City Planning Commission and approval, was the matter then referred to the federal government?

A It was.

MR. LAND: Objection to the form of the question. He should be specific as to what agency he is referring to.

MR. MORRIS: Let him tell us.

Q To what agency of the federal government was it referred?

A The Housing and Urban Development.

THE COURT: All right.

witness is not here. So I respectfully ask leave of

Q Would you tell us what occurred with respect to the processing of approval of the project in the Department of Housing and Urban Development?

A Well, at about that time there was introduced into the complexities of developing housing certain environmental considerations, and we were required to submit certain information so thatthe Department of Housing and Urban Development could determine whether the criteria of the federal laws were being met.

Unfortunately, they didn't know what was required, they could not tell us what we had to furnish them, and there was a long period of confusion during which we from time to time submitted something as requested by them. And that's the processing that had to go through before the Department of Housing and Urban Development made those findings which it had to do before it could continue to process an application for public housing and enter into an annual contribution contract with us pursuant to which we could get the money to finance the project.

Q Were those studies made, do you know?

A Yes.

Q What occurred after the studies were made?

A The Department of Housing and Urban Development issued, I think it is called, a negative threshhold decision,

which is in evidence --

something of that sort.

Q What happened with respect to your agency at that point with respect to the funding of Site 30?

A We were advised by the Department of Housing and Urban Development that they would fund it, and that money would be made available in a certain amount for that purpose.

Q When did that occur?

A Sometime in -- the end of '72 or beginning of '73.

Q What did your agency do with respect to the development of Site 30 as public housing subsequent to that time?

A Well, we began to negotiate with the sponsor who had been designated for it as middle-income, to get him to continue his processing with our agency, the Housing Authority, to develop this as a turn-key public housing site,which means that he would develop it, build it, and then the Housing Authority would purchase it with approval by the federal government.

Q During this period, the period of time that you were at the New York City Housing Authority, which would begin, as you testified, in 1970, did you continue to observe the situation and the conditions with respect to the West Side Urban Renewal Plan and the development of that

A It was.

plan?

A I did.

Q Would you tell us what your observations were.

A I was interested --

THE WITNESS: May I expand on this, sir?

THE COURT: Surely.

A I was interested not only in what was happening within the 20 blocks between 87th and 97th but what was happening with the peripheral area, running down as far as 59th and 65th Streets and up as far as 125th, because the Housing Authority had a large number of units of public housing within that entire area, and what happens within one section of the area affects the other.

In addition to which, because of the various public positions I have held over a long period of time, I conduct one of the largest unpaid apartment finding sources for many elected officials, and I get a constant flow of requests, so that I have to keep advised as to what is going on in different areas of the City, both as to fully tax paying, middle income and low income houses.

Q Will you tell us what you observed with respect to the West Side Renewal Area?

A Yes. It appeared to me from my observations and examinations of records that I have made and from people

involved in the administration of the Urban Renewal Project, that the momentum that was built up in the early years to carry out and achieve the goals of the Urban Renewal Project were being lost, and that there were certain indicies showing up in a variety of places which would indicate that that momentum had been lost, that probably the project was at a plateau, and it wouldn't take very much to start it deteriorating again if it had not already done so.

Q Are you familiar, Commissioner, with the concept of tipping point?

A I am.

Q Would you tell us what your definition of tipping is?

MR. LEVY: Objection, your Honor. I don't think the witness has been qualified as an expert in this respect.

MR. MORRIS: Your Honor, we urge that this witness is an expert in this field. We urge that he has been qualified as an expert with respect to this West Side Urban Renewal Area in particular, and in the field of housing in the City of New York in general.

THE COURT: Mr. Land, you rise. I recognize that you are on your feet. What do you want to say?

MR. LAND: In respect to being an expert in

tipping, one would, of necessity, have to have some expertise in sociology and the other sciences of a greater extent than simply being an official of the various governments in the field of housing.

And, lest Mr. Fried is so qualified, we would strenuously object to any testimony in respect to tipping.

THE COURT: Well, are you all through now?

The law says that the court may receive from a witness his expert opinion and give it such weight as the tryer of the facts thinks it deserves, and that means that you will get all kinds of experts within that category -- those who have made a study of it from a scientific point of view, those who have held public office and have observed the problem and are familiar with the details of the problem, and the court can give such value to it, depending upon the court's recognition of the expertise of the witness.

The objection is overruled. The witness is qualified, certainly, to voice an opinion in the light of his experience.

As to what weight it will give and what attack you will launch remains to be seen but, right at this point, he is entitled to let us have the benefit of his opinion.

THE WITNESS: Your Honor, may --

THE COURT: Up to now, Mr. Fried, you have been good as a witness. You have answered questions. Don't spoil it, don't let it be said, you see, that old addage is true that a lawyer makes the worst witness. I was hoping you would be an exception to that.

THE WITNESS: He makes the worst lawyer for himself.

THE COURT: Now, gentlemen, what's your pleasure? Do we resume tomorrow at 9 or 10? Have you consulted with one another?

MR. GOLD: Yes. I think the concensus is 10, your Honor.

THE COURT: Ten o'clock, and let's part on the note that the Mets carried the day 7 to 2.

Good-night, gentlemen.

- - -

INDEX

WITNESS	DIRECT
Walter S. Fried	
Eugene J. Morris	456

EXHIBITS	IDEN.	EVID.
Plaintiff's Exhibit 5.		478
Plaintiff's Exhibit 6.		483
Plaintiff's Exhibit 7.		486
Plaintiff's Exhibit 8.		488
Plaintiff's Exhibit 9.		489
Court's Exhibit A.		496
Plaintiff's Exhibit 10.	507	511
Plaintiff's Exhibit 11.		516
Plaintiff's Exhibit 12.		519
Plaintiff's Exhibit 13.		524
Plaintiff's Exhibit 14.		527
Plaintiff's Exhibit 15.		528
Plaintiff's Exhibit 16.		528
Plaintiff's Exhibit 17.		531
Plaintiff's Exhibit 18.		531
Plaintiff's Exhibit 19.		534
Plaintiff's Exhibit 20.		535

INDEX (CONTINUED)

EXHIBIT	IDEN.	EVID.
Plaintiff's Exhibit 21.		539
Plaintiff's Exhibit 22.		545
Plaintiff's Exhibit 23.		546
Plaintiff's Exhibit 24.		547
Plaintiff's Exhibit 25.		547
Plaintiff's Exhibit 26.		548
Plaintiff's Exhibit 27.		549

TRINITY EPISCOPAL SCHOOL CORP., and TRINITY HOUSING CO., INC., Plaintiffs

and

ROLAND N. KARLAN, ALVIN C. HUDGINS and CONTINUE, Plaintiff-intevenors

71 Civ 4315

vs

GEORGE ROMNEY, Sec. of Dept. of Housing and Urban Renewal, et al., Defendants.

October 11, 1973
10:00 a.m.

(Trial resumed.)

WALTER S. FRIED, resumed.

THE COURT: Let us proceed.

Commissioner Fried, you understand you are continuing with your testimony under oath without the necessity of being resworn?

A Yes, sir.

THE COURT: Before you continue, counsel, I take it that there is no objection by anybody to Court's Exhibit A for identification being made a part of the record.

MR. MORRIS: I have not been shown Court's Exhibit A.

THE COURT: Well, we turned it over to you yesterday. A lot of things can be avoided, this waste of time.

I turned it over especially to you to look at it and let me know. So look at it during the interim and let me know.

Before I forget, you have been putting into evidence various exhibits in size. You have only made reference to a small portion of some of them. I don't think you intend to have the Judge wade through a lot of material that is of no value. You must shoulder the burden, whether you like it or not. That's what you're a lawyer for, to serve up to the Court exactly which portion of every exhibit you wish the Court to concentrate the Court's attention upon. You don't just throw that in at me and say go find it.

MR. MORRIS: I like the burden very much, your Honor, and I will perform it.

THE COURT: By all means do it. That goes for both sides. I want the pages that you agree on and such other pages as you think you can't agree on but nevertheless already have the exhibits, you have undoubtedly familiarized yourselves with them.

I want to take them with me. As you know, I leave to hold court by assignment of the Chief Justice elsewhere and I want to take these exhibits along with me. I want to study them, and I would like to have them at the earliest possible day; is that understood?

MR. MORRIS: That is understood, your Honor.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURTHOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

A May I report to you, your Honor, in accordance with your instructions yesterday, I communicated with the Housing Development Administration and asked them to make a search for any further copies of that summary report they have. They promised to do so and they will report to the Court.

THE COURT: Follow it up, will you, Commissioner?

A Yes, sir.

THE COURT: And report to Mr. Morris so that he in turn can apprise me.

A Yes.

THE COURT: Go ahead, Mr. Morris.

DIRECT EXAMINATION CONTINUED

BY MR. MORRIS:

Q Commissioner Fried, I show you Board of Estimate Resolution dated September 17, 1970, regarding the approval of the conversion of Site 4 to low-income housing and ask if this is a copy of the resolution.

A It is.

MR. MORRIS: I offer it in evidence.

THE COURT: Show it to counsel.

MR. GOLD: No objection.

THE COURT: No objection. Received. Mark it in evidence, Mr. Clerk, please.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

(Plaintiff's Exhibit 28 received in evidence.)

MR. MORRIS: I have looked at this letter from the Community Action For Legal Service --

THE COURT: Court's Exhibit?

MR. MORRIS: -- Court's Exhibit A.

THE COURT: Court's Exhibit A for identification?

MR. MORRIS: For identification. I do object to it. This letter annexes several pages which it claims were incorrectly numbered or included in the memorandum of law that was submitted to the Court on the motion. The papers in connection with thatmotion are not in the record in this proceeding. They are merely a set of motion papers that were filed with the Court prior to the time we instituted this proceeding, and unless the brief itself to which these pages refer are in evidence in this case, I don't see how these pages could conceivably be relevant to the record and should be introduced into the record in this case.

THE COURT: What do you say, Mr. Douw?

MR. DOUW: Your Honor, I noticed an error in collating our original brief when I was reviewing the papers last week, and so I wanted to substitute the corrected pages and I gave copies to all counsel on Friday when we were meeting. I didn't know that it would cause a problem and I thought it might clear up some confusion in the brief.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

THE COURT: Let me consider it, then. I am not

THE COURT: So what are you doing, withdrawing it?

MR. DOUW: I withdraw it.

THE COURT: In other words, Court's Exhibit A for identification is withdrawn?

MR. DOUW: Yes, sir.

THE COURT: It is not going to be made a part of this record of the trial before me?

MR. DOUW: I don't think it should be. I thought to clear up the brief --

THE COURT: All I want is your decision, I don't want your reasons. All I want to know is, you are not asking that A for identification, Court's Exhibit A for identification, be made a part of this trial record?

MR. DOUW: No, sir.

THE COURT: All right. He is not asking that, and therefore, Mr. Cler, will you just keep it in your own file. It is not a part of this trial.

Thank you.

MR. MORRIS: With respect to the approval by the Board of Estimate of the first amendment, which is dated November 21, 1963, which the corporation counsel indicated he would produce a copy for today, I understand he has not been able to locate that copy, but when he does, he will consent to our introducing it into evidence even though the

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: COrtland 7-4580

present witness is not here. So I respectfully ask leave of the Court at a later date to produce that exhibit.

THE COURT: The Court hearing no objection, it is so ruled.

Q Now, Mr. Fried, were you subpoenaed to testify in this case?

A I was.

Q In addition to your being an attorney and being active in government work in connection with Housing and Urban Development, have you also taught or lectured at various institutions in the field?

A I have.

Q Would you tell us what degrees you have and where you lectured?

THE COURT: Without looking for a lot of questions, you know what the counsel is searching for. Answer it in full.

A Yes, my baccalaureate degree is Bachelor of Science in Social Science, City College, 1927; I have been a guest lecturer of the Columbia School of Architecture, the Graduate School of New York University, the New School for Social Research, Pratt Institute, Harvard University, Massachusetts Institute of Technology.

Q Mr. Fried, I refer you to the preliminary plan,

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y. 10007 TELEPHONE: CORTLAND 7-4580

which is in evidence --

THE COURT: Mr. Morris, may I point out to you that while that is a summation, it doesn't give us any detail as to what it was.

Q Will you tell us the subject matter that you taught.

A The subject matter was housing and urban renewal.

Q Were all of your lectures related to this field of housing?

A They were.

Q And housing of the type that is involved in the West Side Urban Renewal area?

A Subsidized housing of various kinds.

Q And urban renewal as well?

A Urban renewal as well.

THE COURT: Very well.

Q Referring to Plaintiff's Exhibit 5, that is the preliminary plan, do you find in there a provision relating to the desire to have educational facilities remain in the West Side Urban Renewal area?

A I believe there is.

Q Specific provision as to educational facilities. And was one of those educational institutions the Trinity School?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

A It was.

MR. LAND: Your Honor, the document will speak for itself.

THE COURT: Yes, but he undoubtedly wants to call something to my attention.

Is that it?

MR. MORRIS: That is it.

MR. LAND: I would like to have the page reference.

THE COURT: That is different.

A I am looking.

THE COURT: Find it first.

MR. MORRIS: Your Honor, may I request the Court's leave, in the interests of preserving time, that we defer this question for the moment until later when --

THE COURT: You want to come back to it?

MR. MORRIS: I want to come back to it, yes

THE COURT: All right.

MR. LAND: May the prior questions be striken?

THE COURT: Yes indeed, it's disregarded until it is picked up again.

MR. MORRIS: Yes.

Q Mr. Fried, was there an office of the H.R.B and the H.D.A located on the site of the West Side Urban Renewal area during the period that these agencies had jurisdiction

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

of the Urban Renewal Plan?

A There was.

Q Would you describe that site office and tell us what its function was?

A Well, there were two different site offices. Let me see if I can remember where they were located. One was located on the same street with the only riding stable in the City of New York, whatever street that is. After that one was abandoned, a new one was built on Columbus Avenue in a site abandoned by a supermarket.

Offhand, I don't remember exactly what street it was.

Q Would you tell us the function of that office?

A The function of that office was to represent a particular agency within the district and to assist people particularly in the area of rehabilitation of the brownstones, to advise them of their rights with respect to relocation, and to give them any information that they may have with respect to the final plan of the West Side Urban Renewal Project.

Q Were the personnel that were there authorized to represent the agency?

MR. LAND: Objection, your Honor.

THE COURT: On what ground, counsellor?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y. 10007 TELEPHONE: CORTLAND 7-4580

MR. LAND: Unless we identify the people who were there we don't know if they were authorized to represent the agency.

THE COURT: Objection sustained.

MR. MORRIS: Yes. I withdraw the question.

Q Would you tell us who were the agency representatives on that site?

A Well, there were a large number of them. The two names I remember, one was, I think, Colonel Hunter and the other a man by the name of Lauria.

Q Were those --

A Wait a minute. At another time there was a man by the name of LeRoy Williams.

Q Was there a man by the name of Tennite or Vannite?

A van de Velde, Christopher van de Velde.

Q Was he also authorized to represent the agency?

A Yes.

Q Would you define for the Court the concept of tipping point?

MR. LAND: Could we have the question read again?

THE COURT: Would you be good enough, Mr. Court Reporter?

(Question read.)

MR. LAND: I think he should ask him first the

question, does he know anything about tipping and then he can define it.

THE COURT: He did yesterday. That's when you got up and ha the record show you didn't think he was competent to testify on that point and you heard the Court's ruling.

Now, the question stands. What is your answer?

A I think the tipping point of a geographical area is a point in time, and that point in time may stretch over a period of time, it isn't an exact moment on an exact date, when people who have an option no longer desire to live in the area, no longer desire to move into the area and private capital is no longer interested in investing in residential accomodations within the area.

Q In your opinion, commissioner, would the West Side Urban Renewal area pass the tipping point if more elements of low-income housing are introduced than are already there?

MR. LAND: Objection to the form of the question unless we have the factual basis upon which it is predicated.

THE COURT: Objection sustained.

MR. MORRIS: I said that are already there, that means as of today, as of this time, today, at this time.

MR. LAND: There's no testimony yet that the witness knows how many low-income residents are now there.

THE COURT: Precisely.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CO 7-4580

MR. MORRIS: Your Honor, may I respectfully say that that is subject to connection. We will have witnesses who will testify extensively as to the present situation with respect to occupants of low-income housing and proposals for new low-income projects who will appear later in the trial.

THE COURT: All right.

MR. LAND: That may be very well, but the witness certainly can't testify about facts which some witness, other witness, may testify about.

THE COURT: Let's see what he has to say. It will be subject to your motion to strike. I don't know just what he is going tobase it on. It may develop that he knows what he is talking about and can give us a general identification of these factors that go into his conclusion, whatever it is, with regard to tipping.

10-11-73
Trinity

MR. LAND: Well, your Honor, this is a very critical point.

THE COURT: I know it is.

MR. LAND: And, as I understand the rules of evidence with respect to expert witnesses, the only times when they may give an opinion is either when the question asked of them is in the form of a hypothetical or when all the factual bases upon which they give their opinion have first been introduced into evidence.

Otherwise, the expert may not testify. So, we strongly object until the factual basis is laid, either in the form of a hypothetical or in the form of the witness' own recollection of the facts.

THE COURT: That's a good statement but that does not rule out what the Court said. I am not making it a final piece of evidence. I am saying if it doesn't become a piece of evidence by the time he is through, you make a motion to strike it. That is all there is to it.

We have no jury. I am not saying that it is going to stand. I am just testing it out. Let's see what he has there. There is no question, and you are perfectly right, there ought to be as much developed before that question is asked as can be and I think counsel ought to be guided by it and try to get as much out of the witness as

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: (212) LAND 7-4580

he can before he puts that final question.

Whichever way you do it is allright with me.

MR. MORRIS: Shall I repeat the question?

THE COURT: Yes, please.

Q Mr. Commissioner, in your opinion, would the West Side Urban Renewal area pass the tipping point if more elements of low income housing are introduced into the area than are already there?

THE COURT: I thought you were going to take advantage of what was suggested. If you can, I would rather you do it that way.

You are putting the cart before the horse. Get as much out of this witness as you can on which he predicates an answer to the question that you have just put to him.

In other words, I gather that he is not able to give us exact figures and I therefore say that I will allow him to give us the basis for his testimony, as to what he bases his conclusion on, if he has one, with regard to the question you have just put to him.

MR. MORRIS: Yes, your Honor.

Q Commissioner, are you familiar with the situation that exists in the West Side Urban Renewal area at the present time and has existed for, say, a period of the last few weeks or the last few months?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: COrtland 7-4580

MR. LAND: Objection to the form. It's too broad.

THE COURT: Overruled.

A I am.

THE COURT: How have you gone about that? What have you done that enables you to say "yes" to that?

A As of this morning, your Honor, I had my staff check for me the actual number of low rent housing accommodations created by the Housing Authority within the West Side Urban Renewal area and additional buildings that were included within the original 2500 calculation.

They are as follows:

New construction in the Stephen Wise Project, 399 units.

At 120 West 94th Street, 70 units.

At 74 West 92d Street, 168 units.

At 589 Amsterdam Avenue, 158 units.

In DeHostos, 223 units.

At 830 Amsterdam Avenue, 159 units.

In the Douglas Addition, 135 units.

--making a total of 1312 units.

The Housing Authority has also created low rent housing accommodations by rehabilitation as follows:

At 54 West 94th Street, there are 40 units; in the brownstones throughout the area, there are 236 units, making

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

a total of 276 units.

Pursuant to Section 23, Leasing, whereby the Housing Authority leases apartments and pays the current rents and then sublets them at low rentals, we have the following:

In Tower West, 60 units.

In New Amsterdam, 53 units.

In Columbus House, 72 units.

In Columbus Manor, 61 units.

In Westwood house, 35 units.

In Trinity House, 57 units.

In Leader House, 84 Units.

And, in Tower West, we are currently engaged in renting 14 units.

--adding up to 436 units.

MR. GOLD: Is that Townhouse West?

A Yes.

If you add those together you come to 2024 units created for the purposes of the West Side Urban Renewal Project.

MR. LAND: That is low income housing, we are talking about?

A I said low income housing created by the New York City Housing Authority.

THE COURT: He did, indeed. That makes a total --

A 2024 units.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: COrtlandt 7-4580

THE COURT: That is correct, as I got it. Each one of them low income units; is that right?

A Yes. In addition to that, there were a number of units, the number of which I do not know, created by the use of the State Capital Grant Program and by the skewing of rents, the arbitrary skewing of rents, making certain apartments available at rentals within the income limits of low income tenants.

I also, sir --

THE COURT: That's an unknown quantity. I don't know whether to place a figure of 2 or 200 on it. I don't know. That is meaningless to me.

A I don't know, either, but a subsequent witness may have the figures. There is no way I could find them out.

THE COURT: All right. Thank you.

A In addition to that, I have to look at the area in one of two ways -- either add to this figure, and by "this figure" I mean the 2024, the number that the Housing and Development Administration intends should be created in the future, and to get that figure, I looked at the affidavit of Mr. McGregor, who is the current Deputy Administrator, who submitted an affidavit under oath to your Honor in which he said in paragraph 16 on page 14 of his affidavit --

THE COURT: May I interrupt? An affidavit in

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y. N.Y. 10007 TELEPHONE: COrtlandt 7-4580

support of what? It's not before me on the trial.

MR. GOLD: Your Honor, that was an affidavit in opposition to the motion for preliminary injunction. It is not in evidence at the moment.

THE COURT: Thank you.

A That is what I looked through to find out HDA's official position.

THE COURT: I am not quarrelling with you. Just wait. You are a witness just now. These discussions between counsel and myself you must not interfere with.

Now, gentlemen, there is nothing in the books that says that I can't go to any paper on file. I can certainly go to motion papers and not have to ask permission, but I don't want to go wandering through themotion papers needlessly.

Is there any objection to that affidavit being made a part of the trial record? You offered it on behalf of the City.

MR. GOLD: No, your Honor, I don't believe there is any objection.

THE COURT: Then that affidavit will be considered a part of this trial record.

MR. MORRIS: Your Honor, if that is done, I respectfully request that all the motion papers be considered as part of the trial record, because that affidavit answers

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

THE COURT: Let me consider it, then. I am not going to direct that any affidavit be a part of it. I'll think it over and see what we should do about it.

I do think that it's something that we ought to decide sooner or later. At any rate, that remains open. Please understand, I am not ruling that motion papers become a part of this trial record.

Go on, Mr. Witness.

Yes, Mr. Land?

MR. LAND: One way to solve it, perhaps, if the witness could read from the paragraph of the affidavit upon which he relies.

THE COURT: Of course. Will you do so?

A Yes. I refer to paragraph 46 on page 14, the bottom of the page. Mr. McGregor says: "Another 1082 are in planning --"

MR. LAND: We would like to have the entire sentence read.

MR. GOLD: It's being read out of context. If he reads the whole paragraph, it is all right.

THE COURT: Read the whole paragraph, please.

A Paragraph 46: "Currently, about 1646 low income dwelling units have been constructed in the area and another 1082 are in planning, including 160 on Site 30 and 207 on

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

Site 4. Of course, units in the planning state cannct be determined with any precision and the figures are always subject to change to meet current needs and new programs."

If you eliminate the 430 units in Site 30 and Site 4, you get about 640 units to be added to the 2024 units, if mathematics are correct.

In paragraph 49 --

THE COURT: Of the same affidavit?

A Page 15 of the same affidavit, Mr. McGregor says the following: "Thus, of the total of about 14,500 units to be contained in the entire West Side Urban Renewal area, about 3000 or slightly more than 20 percent are to be low income."

Q Now, Commissioner --

A I haven't finished, sir.

To this figure must be added a sum --

THE COURT: Referring"to this figure," you mean the total?

A The figure of in excess of 3000 -- must be added a figure that I have not been able to ascertain.

THE COURT: Which you mentioned before?

A No, sir. And that is the number of families for whom the Department of Social SErvice is paying the rent, who are currently living in moderate income projects which were

created under the 236 program. I don't know what that figure is. It is something. So, in my opinion, either in existence or planning there is in excess of 3000 units of low income apartments within the West Side Urban Renewal area or immediately adjacent to it.

Now, I also took into consideration that because of the sition we are in as far as legislation and funding is concerned, that it is entirely possible that within the foreseeable future, and by that I mean a number of years, there will be no further development within the West Side Urban Renewal area, so that if we take the units created by the Housing Authority to date, which is 2024, and add to that the remaining of the apartments I would characterize as low rental apartments in the buildings which are yet to be demolished, we get to a number far in excess of 3000 units.

So that if you look at it in either way, we are going to have the highest number of low rent units that anybody has ever mentioned in connection with the West Side Urban Renewal area.

MR. LEVY: I would like to move to strike that portion of Mr. Fried's testimony because he admitted he doesn't know how many units there are and he is adding an unknown figure to 2000 and coming up with 3000.

THE COURT: Yes. The last part of the answer is

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: (212) 7-4580

stricken. It's too conjectural.

I have allowed a certain amount of it in without definiteness, expecting that there will be a filling in of the areas that this witness had admitted he is not certain about. When those figures do come in, then we can see whether they fortify what the witness has testified about but this last portion is too conjectural.

The application is granted and it is stricken.

In other worfs, "far in excess of 300," that portion is stricken.

MR. MORRIS: Yes, sir.

Q Now, if the number of low income units introduced into the West Side Urban Renewal area exceeds 2500, in your opinion would that cause the tipping point to be exceeded in this area?

MR. LAND: Objection, your Honor.

THE COURT: Objection sustained. That is a leading question. You are putting the answer right in the witness' mouth.

Stricken and disregard it.

On what do you predicate your assertion that a tipping has occurred? First --

MR. LAND: He hasn't testified to that.

A I haven't testified to that.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

MR. LAND: He hasn't testified at all to that.

Q In your opinion --

THE COURT: Wait a minute.

Did you not testify in words or substance yesterday afternoon or today that you had a position with regard to the tipping?

A Yes, sir.

THE COURT: And did you not say in e-sence that tipping had occurred?

A I didn't think I did.

THE COURT: All right. So, disregard my question and tell me whether or not in your opinion tipping has occurred; yes or no.

A Judge, it's a very difficult question to answer with a yes or no.

THE COURT: The witness hesitated and said it is a difficult question.

Next question.

Q What is your view with respect to the situation that exists in the West Side Urban Renewal area as of this time with respect to tipping point?

MR. LAND: Objection. It's overly broad, your Honor. We need facts and figures to support any conclusion on expert testimony rather than the situation. What situation?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

Exactly what is he referring to?

THE COURT: Mr. Morris, has this witness testified to everything that he can say with regard to what you regard as a foundation in order to get the question of tipping resolved?

MR. MORRIS: Yes, he has, subject to my introducing other testimony as to the items which he personally is not familiar with, for which I will have other witnesses who will appear at this trial and will testify and, therefore, your Honor, I ask that the question be permitted and that he be permitted to answer subject to connection as to the specific additional items about which he has testified he does not have information.

THE COURT: Here is another example of why we have the procedure whereby the Court says, "Let's see what he has to say," and then a motion to strike is always available to you.

I said that at the beginning and now I am more certain than I was before that that is exactly what we will do here and if it's not connected up, a motion to strike the whole or a substantial or any part of the witness' testimony will be in order.

Go on.

Q Would you answer the question, Mr. Fried?

MR. LAND: Could we have the question read again?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: COrtland 7-4580

MR. LAND: What affidavit, your Honor, what is he

THE COURT: Certainly. Please read the question, Mr. Court Reporter.

(Record read.)

A In trying to make a determinationwhether any geographic area is at a tipping point, there are certain things which we could be expected to look at and I find certain of these indices in existence within the West Side Urban Renewal area.

A tipping point is effected not only by what occurs within the area but by what occurs in the immediate vicinity and the manner in which it is treated by the media.

If I may be permitted to give an example, sir, New York City does not have the highest crime rate in the United States of America but, because of the manner in which crime in New York City is treated by the media, everyone thinks it's dangerous to visit New York City.

Miami and San Francisco, which have higher rates, are looked upon as vacation resorts.

So, there are a number of things which go into play in making up people's minds as to whether a neighborhood is tipping or not. You look for the following indices:

Number 1, is there any private investment in residential construction within the area? In the West Side Urban Renewal area I find there is none.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

number that was generally accepted by most people within the

There were a number of Mitchell-Lama projects which were scheduled to be created as cooperatives. Because of evidence that it was becoming more and more difficult, if not impossible, to sell cooperatives, the sponsors of these Projects requested that there be change from cooperative to rental units.

Now, it may very well be that one of the things that influenced them to do this is tax benefits that they get under a rental. The fact, however, does remain that these apartment houses are not rental units and not cooperatives and you could expect a cooperative to be a strengthening force within a community. You have a more permanent population than you do in the rental units.

One of the things that was promoting and advancing the West Side Urban Renewal area was the fact that private people were buying brownstones that the City of New York had acquired and were rehabilitating them. This added to the reputation of the West Side Urban Renewal. Stories about this appeared in the media. Prominent people lived in them.

I have been advised on inquiry at HDA that the City hasn't sold a brownstone in over a year.

Now, this may be a result of the mortgage money but the fact does remain that they were not selling them and new ones were not being rehabilitated.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

Q Would you tell the Court how that tipping point

I examined the records of occupancy of the public housing units which are in existence in the West Side Urban Renewal area and I have been given a report that there is a constantly declining white population and a constantly increasing welfare population.

MR. LAND: Objection to this testimony unless we have the report. He is testifying from hearsay information.

A If I may, sir, I'll give you a report.

The white occupancy in the --

THE COURT: What report are you referring to?

A This is a report prepared for me by the stastical department in the Housing Authority of the City of New York and it is dated October 1, 1973.

MR. LAND: May we see the report first, your Honor, before he continues?

THE COURT: Surely.

Will you mark it for identification, Mr. Clerk, please, first.

xxx (Plaintiff's Exhibit 29 marked for identification.)

MR. LAND: May I have a voir dire on this, your Honor?

THE COURT: Surely -- "on this," referring to the last exhibit for identification?

MR. MORRIS: Your Honor, I haven't offered it in

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

evidence.

THE COURT: The witness has referred to it.

MR. MORRIS: Well, I think it might be better if I offered it in evidence, so that we then have the voir dire, after my proffer.

THE COURT: He has already testified and the question is whether I should strike it, depending on whether or not that goes in.

Let's see what they have got to find out. He has already said what that contains and he didn't go into it in detail but he mentioned it as a factor on which he predicates his conclusion.

To make it simple, do you offer 29 in evidence?

MR. MORRIS: Yes, I do, your Honor.

THE COURT: All right. Examine on the voir dire. 29 is going to be examined into by counsel.

MR. LAND: No objection to introducing this document, your Honor.

THE COURT: Very well. Received. Let the Clerk mark it.

xxxx (Plaintiff's Exhibit 29 received in evidence.)

THE COURT: Now that 29 is in evidence, will you please continue with your testimony and make reference to it and explain it to me in simple language?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

that urban blight existed prior to the final Urban Renewal

A Yes, sir. Plaintiff's Exhibit 29 indicates that the decrease in percentage from the point of occupancy to October 1, 1973, in the leased housing, the white occupancy at occupancy was 26.7; it is currently 25.8.

The white occupancy in Wise, DeHostos, 589 Amsterdam, 74 West 92d, 120 West 94th, and in the rehabs has decreased from 52.4 to 46.1

The black occupancy in leased housing increased-- decreased from 18.3 to 17.8.

Q Just a moment. I didn't hear what you said then. Would you give us that --

A Decreased from 18. --

Q Which population?

A Black.

Q Black population. What?

A In the same projects, in leased housing, from 18.3 to 17.8.

However, in the projects I read before --

THE COURT: Give them again.

A Wise, DeHostos, 589 Amsterdam, 74 West 92d, 120 West 94th and the rehabs, increased from 15.6 to 19.5.

The Puerto Rican occupancy in the leased public housing decreased from 52.4 to 51.4 but in the newly constructed, to wit: Wise, DeHostos, 589 Amsterdam, 74 West 92d, 120 West 94th and the rehabs, increased from 31.3 to 33.6.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURTHOUSE
Foley Square, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

So that in my opinion there had been a reversal

Now, in span of time, this is a short period of years and to me indicates a drift. Now, it may very well be true that this is taking place throughout the City as a whole but the fact does remain that it is taking place within the West Side Urban Renewal area.

The further indication to me, and I think I started to testify to this yesterday, is the fact that I received a tremendous number of requests, and by tremendous I mean probably about 50 a month, for assistance in getting apartments for people either in low rent or middle income or conversional housing.

Within the last 6 months, whenever my secretary would offer an apartment within the West Side Urban Renewal --

MR. LAND: Objection to the hearsay testimony he is talking about now, people requesting something of him. The testimony as to that is clearly hearsay, your Honor, unless the people who requested something of him are members of the defendants, officers or agents of the defendants, and being admissions by the defendants.

Other than that, what he is testifying to now is clearly hearsay.

THE COURT: Are you saying that the letters you just mentioned are letters that have come to you in connection

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., 10007 TELEPHONE: CORTLANDT 7-4580

number has been increasing, and of my own personal knowledge,

with your duties and obligations of your office?

A Yes, sir. Primarily they have come from elected officials who are seeking assistance for their constituents.

THE COURT: Have you, yourself, examined the letters?

A Yes, I have.

MR. LAND: Excuse me, your Honor. Could he answer the question about coming to him in his official capacity?

THE COURT: That's right.

MR. LAND: His business as vice chairman of the Housing Administrator.

THE COURT: Is that right?

A Yes.

MR. LAND: Rather than someone who might know where housing is?

A Well, we have, within our control, over 165,000 apartments and I am very often asked for assistance by elected officials on behalf of constituents, whoever applied, can I look into the matter and see why they are not getting an apartment.

That is an official function of mine.

MR. GOLD: May I add that those 165,000 apartments are public housing units.

A That's right.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE

will have to be a massive infusion of government money to

MR. GOLD: Mr. Fried talked about conventional units, middle income units.

A In those cases I am asked, because of my familiarity with those projects, many of whom I supervised at one time and people I know in the field.

MR. GOLD: Then that is not in your official capacity.

A My answer is not intended to apply to those.

MR. GOLD: That is the distinction that I think has to be made.

THE COURT: I don't understand you, Commissioner.

A The Housing Authority, of which I am a member, has jurisdiction over 165,000 apartments.

THE COURT: I understand that.

A When requests are made of me by elected officials on behalf of their constituents, who may have applied for apartments, they are seeking information as to why they haven't gotten an apartment and what can be done to assist them in getting an apartment. That is an official function.

In addition to that, because of my long activity within the field of subsidized housing and housing in general, a lot of people ask, so and so is coming to New York -- for instance, I was asked officially by the College of the City of New York, when Dr. Marshak was coming to New York, if I

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURTHOUSE
FOLEY SQUARE, N.Y., N.Y.

answer. What have you to say with regard to, and that is

could find a ten-room apartment for him.

What indicates to me something of importance within the West Side Urban Renewal is that with respect to requests for apartments within public housing when, for a perfectly legal, valid reason, we could not offer them an apartment in the project they were seeking, if any time we suggested how about the West Side Urban Renewal, they said no, we'll not move there.

MR. LAND: Objection. It's hearsay, your Honor.

THE COURT: Yes, that is so. Strike it.

But I would like you to go back to the letters. The letters you said came to your attention and so I take it these are letters of recent origin.

A Yes, sir.

THE COURT: And you had to respond to them, to those letters?

A Yes, sir.

THE COURT: And you did respond?

A Yes, sir.

THE COURT: On your official stationery?

A Yes, sir.

THE COURT: To the people who made inquiry?

A Yes, sir.

THE COURT: And you say as part of your official

SOUTHERN DISTRICT COURT REPORTERS
United States Court House
Foley Square, New York, N.Y. 10007 TELEPHONE: COrtlandt 7-4580

standards established by the City Planning Commission are:

obligation as a public official holding the position that you do, on your part to respond to them what they should do or act on with regard to your official estimate of the matter concerning which they inquired? Is that right?

A Yes, sir. As a -- as a matter of --

THE COURT: Just listen.

Is that right?

A Yes, sir.

THE COURT: What were you going to say? As a matter of what?

A As a matter of fact, many of the letters that come in are still addressed to Ira Robbins, a former vice chairman, so this is a carryover of functions from the Authority.

THE COURT: All right, sir. I will overrule the objection and allow the answer to the question with regard to those.

A And, lastly, from my own personal observation, the character of the retail establishments --

THE COURT: You see, you go on with something that has not been asked. I have now said that I overrule the objection and I will allow you to answer.

What was your answer to the letters to which you have testified?

A In those instances where I offered assistance in

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 Telephone CHelsea 3-4580

A I would.

67

securing a low rent housing accommodation within the West Side Urban Renewal area, it was turned down.

THE COURT: Now wait for the next question.

Q Did you have other reasons for coming to your conclusion as you did, as you testified?

THE COURT: You began to enumerate them, you remember, and we got to that point or one point and then we enlarged on it. What else do you wish to say to complete your answer?

A Two things: From personal examination --

THE COURT: What did that consist of? That's general terminology.

A Walking the area and going into retail establishments, it has come to my attention that the character of the retail establishments within the area and immediately adjoining, particularly in the vicinity of 96th Street, the character of those stores has declined. The merchandise carried by them --

MR. LAND: Objection.

THE COURT: Wait a minute. Counsel has an objection.

MR. LAND: I move to strike the answer in respect to the use of the word "character". It is such a loose term, without any meaning --

THE COURT: You see, we are galloping at points here that should not be permitted. For instance, I don't know

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURTHOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

that you had in mind? Where in effect you said there was

whether he was in these premises before and, therefore, was making a comparison.

This is generality run riot, when you do that, and I don't want that. It is of no value. You have got to particularize so, will you please give us your familiarity with these premises with respect to prior occasions as compared with the recent visits there.

A Over a period of 40 years, I have walked that area, shopped in the stores in the area, eaten in the restaurants.

THE COURT: Now, that's testimony. All right. Go on.

A Many of the stores have moved; they have been replaced by stores with lower prices. In some instances, there is shoddy merchandise. The restaurants are no longer of the same caliber.

THE COURT: What do you mean by that?

MR. LEVY: Your Honor, we still have a geographical problem and Mr. Fried has talked about 59th Street to 135th Street and then jumped into the West Side Urban Renewal area.

THE COURT: No. I never understood this to mean from 59th Street, or am I in error there?

A The only time I mentioned 59th Street was in connection with Mr. Badillo's —

THE COURT: What you are talking about now embraces the Renewal area?

A The renewal area and the immediate area between Amsterdam Avenue and Broadway, from 87th Street to 97th Street.

THE COURT: What do you mean by "these restaurants"?

A Before, you had what we would know as a conventional restaurant, in which you could go in and have a complete meal, if you so desired. Most of these places have been replaced by pizza places, short order, McDonald's hamburger joints.

I am not indicating that there is anything wrong in any of those. I, myself, patronize them.

The fact does remain that the quality, if you can describe it as such, and there is a --

MR. LAND: Objection to the use of the word "quality". Whether it is a former restaurant or a pizza parlor and whether that means there is an increase or decrease of quality, is a subjective matter.

I would object to the use of the word "quality".

THE COURT: Well, I don't have to adopt his understanding of it but I can certainly allow him to testify and that is a proper word for him to use, if he sees fit to use it.

Go on.

A And, lastly, the number of public housing or low rent units in every category that is either in existence within

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

the West Side Urban Renewal project area or planned therefor by every figure I can see, either those of my authority or the affidavit of the Administrator of the Housing and Development Administration, is in excess --

MR. LAND: What affidavit, your Honor, what is he referring to?

THE COURT: Objection sustained.

A Plaintiff's Exhibit No. 29, which is the affidavit of Mr. McGregor which is before the Court.

MR. GOLD: I'm sorry, that is your list of racial mix in public housing.

THE COURT: That's right.

A Then I'm sorry.

THE COURT: Take your time.

A It is the affidavit which is before your Honor.

MR. LAND: It is not before your Honor.

THE COURT: Tell us whose affidavit you are talking about.

A It is the affidavit of David McGregor which was submitted on behalf of the Housing and Development Administration.

THE COURT: The affidavit to which you have already referred and you have read extracts from it before me?

A Yes, sir.

THE COURT: Now I know what affidavit you are talking about.

A Which Mr. McGregor says theere will be in excess of 3,000 units. All of these figures are in excess of the

number that was generally accepted by most people within the community as being a number sufficient to take care of the relocation needs of the area and which would not jeopardize the continued improvement of the area.

Q What was that number?

A It is my opinion that as you get in excess of that figure to any notable extent, that you will then tip the area to that it will no longer carry out the purposes of the urban renewal project.

Q Were you connected in any way with the tipping point situation involved in the Seward Park extension Urban Renewal Project where public housing was involved in litigation in this court in the Otero case?

A Yes.

Q Would you tell us what your connection with that was?

A The Housing Authority is a party defendant.

Q A party defendant in the action?

A Yes, sir.

Q Did that involve an issue with respect to the tipping point which relates to your description of tipping point in this proceeding?

A That was considered by the court to be an issue, yes, sir.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

Q Would you tell the Court how that tipping point situation existed in the Seward Park Park Extension situation and how that relates to the problem you testified to in the West Side Urban Renewal area.

MR. LAND: It is two questions. Can we have one question at a time?

THE COURT: Yes, objection sustained. Split it up.

Q First, could you tell us what the situations was in the Seward Park Extension?

A Well, the issue there is, I think, a little more complex.

MR. LAND: Just a problem here, your Honor. The witness is testifying about a case which, as I understand it, has been remanded from the Second Circuit down to the Federal District Court here for further factual findings before Judge Lasker. This witness is a member of the defendant group there and now giving testimony in this case which may constitute admission in respect to that other action.

There may be a serious question; that is counsel is not present here and may not want him to testify in this court with respect to testimony in the other case which may be quite similar. I just want to raise that caution here in the court and also to Mr. Fried.

I don't know whether he has absolute authority to

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

THE COURT: All right.

testify at any time without checking with counsel, but I think that should be inquired into.

THE COURT: Yes, that's a good point, Mr. Land, and I wonder whether you wish to persue it or whether you would like first to confer with counsel in that other matter and then renew this phase of the witness' testimony on another occasion. I would advise that course.

MR. MORRIS: I will follow that course, your Honor.

THE COURT: All right.

Q Commissioner, are you familiar with the term urban blight?

A Yes, I am.

Q Would you tell us what you mean by urban blight?

A Urban blight exists when a geographical area is characterized by a change in tendency to one -- or occupancy of one of lower socio-economic class, when the condition of a substantial number of the structures within that area are deteriorating, when the nature of the commercial establishments is changing in a downward nature, when there is a lack of interest in private investors investing in the area, and when there is an increase in the crime rate within the area.

If all or most of these factors exist, we can say that urban blight exists within the area.

Would you say in the West Side Urban Renewal area

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

that urban blight existed prior to the final Urban Renewal Plan in 1962? 6-1

A The Planning Commission so found, after an exhaustive hearing, that it was a deteriorating area and made such a finding.

Q Did you, of your own personal observation, agree with that finding?

A I did.

Q The condition with respect to urban blight, did it change in any way during the period from 1962 until 1970 after the enactment of the Urban Renewal Plan?

A It did.

Q Would you tell us in what respects it changed?

A There was a demolition of deteriorating and deteriorated structures and the replacement by new, sound buildings. There was an introduction into many of these buildings of a high percentage of higher socio-economic groups, side by side, with a representation of lower income groups. The projects were racially integrated.

You had a conversion of many of the brownstones from single-room occupancy to private ownership and rental of floor-throughs. You had an introduction of new restaurants, boutiques, within the West Side Urban Renewal area in some of the new structures that were created.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

So that in my opinion there had been a reversal of the deteriorating trend within the West Side Urban Renewal area.

Q Beginning in 1970, from the time when the squatters came into the area in the spring of 1970, what was the condition with respect to urban blight up to the present time?

A In my opinion, the improvement was halted, and over a period of years I would say that the hight to which it had risen was the highest it had achieved and probably the highest it will achieve.

Q In your opinion, do you observe from your own personal observation a return of some of the conditions of urban Right as you have defined them?

MR. LAND: Objection, it's leading, your Honor. Ask him what he does observe.

THE COURT: Objection sustained.

Q Would you tell us what you observed with respect to urban blight in the area for the period from 1970 up to now?

A Because of the increased numbers of low-income units that have been created and have been allowed to remain in the balance of the project area, which may be the cause to some extent of the failure of financing by the federal, state or city governments, but the fact does remain that that

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

(Question read.)

number has been increasing, and of my own personal knowledge, the Department of Relocation has moved into the area from outside of the area, low-income families, instructions from which relocalities had been taken out by the Department of Relocation.

So that, in my opinion, within the last year the area is on thedowngrade.

Q And there has been a return of urban blight?

A A continuation and to some extent a worsening.

Q Of urban blight?

A Yes.

Q Would you tell me, assuming a district passes the tipping point and urban blight increases, what do you visualize as the future for that area?

MR. LAND: Can we have that question read, please?

THE COURT: Certainly. Would you mind, Mr. Court Reporter, please?

(Question read.)

MR. LAND: Can you read that back once again?

(Read.)

A One of three things will happen: Either it will turn into a completely deteriorated area, which has happened in many neighborhoods within the City of New York, because none of them stay static, they're always in flux, or else there

will have to be a massive infusion of government money to improve conditions, or else for some inexplicable reason a neighborhood becomes popular and private enterprise will invest sufficient private capital to improve it.

Unfortunately when private enterprise does it, you don't get the socio-economic mix that we would all like to see.

Q Was integration of the area a continuing concern of the officials charged with the planning and development of the Urban Renewal Plan?

A It was.

Q Was neighborhood stability a basic goal of the West Side Urban Renewal Plan?

MR. LEVY: These are leading questions, your Honor. If Mr. Fried is going to state what the goals are, let Mr. Fried state them.

THE COURT: They are leading. Objection sustained.

Q Would you say the elements of neighborhood stability had any relationship with the development of the West Side Urban Renewal Plan?

MR. LAND: Objection, leading.

THE COURT: Yes, it is leading.

MR. MORRIS: Your Honor --

THE COURT: Just give him the term and let him

answer. What have you to say with regard to, and that is it, you see.

Q What have you to say with regard to neighborhood stability with respect to the West Side Urban Renewal?

THE COURT: Right.

A May I have Plaintiff's Exhibit 5, please?

THE COURT: Certainly.

While the witness is examining the exhibit, Mr. Morris, can you give me a rough estimate of how much more time you think you may want with this witness?

MR. MORRIS: I would say half an hour if there are not extended objections.

THE COURT: All right.

A I have given this answer before --

THE COURT: No, just answer the question.

A I'm sorry.

I am referring to --

THE COURT: Exhibit 5.

A -- Plaintiff's Exhibit 5, page 15, and I read as follows: "The preliminary Urban Renewal Plan as proposed herein is designed to create a stable residential area that will preserve the existing assets of the community and improve the area in those respects in which it is now lacking.

Specific goals which are based on the general

SOUTHERN DISTRICT COURT REPORTERS
United States Court House
Foley Square, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

standards established by the City Planning Commission are: Number one, the elimination of substandard housing with particular emphasis on the elimination of overcrowding and unsuitable uses; Two, provision for new residential development of various types and rental ranges to serve a broad cross-section of the community with a pertinent retail development; Three, preservation and improvement of community facilities including the provision of additional open space for both active and passive recreation; Four, encouragement of permanent residences in the area through the improvement of amenities and accomodations for family living; Five, creation of a harmonious balance of high and low structures and of open spaces; Six, improvement of the tax base of the area by encouraging private investment on the broadest possible basis; Seven, reduction of traffic congestion and parking problems; and lastly, eight, development of active community participation throughout the renewal process."

Q Commissioner, would you say that the goals and objectives, as you have just read them from Plaintiff's Exhibit 5, were implemented in the course of the development of the West Side Urban Renewal Plan up to the period of 1970?

A Most of them.

Q Would you say that a change with respect to that occurred subsequent to 1970 up to the present time?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: COrtlandt 7-4580

and one less would serve the community. It was a figure

A I would.

Q Would you tell us in what respects that change has occurred?

A There has been almost a complete cessation of the elimination of substandard housing. Because of a lack of funding, there has been no provision for new residential development. There is less encouragement of permanent residents because of the nature of the accomodations being built.

There are rentals instead of co-ops. There has been no improvement of the tax ~~space~~ base because practically all of the housing has had partial or total tax abatement. I guess through no fault of anybody there's been no reduction of traffic congestion and parking problems.

In those respects, the purposes of the Urban Renewal Plan have not been carried out and are not being carried out.

TEH COURT: Before you said with regard to the purposes being fulfilled or on their way to being fulfilled. You said that that had been taking place except, and you didn't name what the exceptions were; do you remember? Do you remember your answer?

A Yes.

THE COURT: All right. What were the exceptions

that you had in mind? Where in effect you said there was progress on all fronts except.

A There has been no progress with the things I referred to just now since 1970.

THE COURT: Yes. But up to 1970?

A There had been progress all along the line.

THE COURT: On every one of them?

A With the exception of parking.

THE COURT: That's what I am asking. Is that what you meant by the exception or words to the effect that almost all were fulfilled?

A Yes, were being improved.

THE COURT: Were being improved?

A Yes, sir.

THE COURT: Very well. Parking was the only one?

A Parking and traffic.

THE COURT: Is that it? Is that what you meant?

A Yes.

THE COURT: Very well.

Q With respect to the changes that you just testified to, would you say that they would foster integration in the area or create an adverse situation to integration in the area?

MR. LAND: Objection, your Honor.

THE COURT: Sustained. That's leading.

Q With respect to integration in the area, would you tell us your views as to what the present situation, that you have just testified to, is in the West Side Urban Renewal area?

MR. LAND: Objection, your Honor, the witness has not been qualified as an integration expert.

THE COURT: Objection overruled.

What is your answer?

A The West Side Urban Renewal area and the area immediately surrounding it, as long as I know it, and that's for a number of decades, has been, to some extent, an integrated area with various races and socio-economic groups living side by side in comparative harmony.

One of the purposes of the Urban Renewal Project was to preserve that, because history prior thereto had shown that in urban renewal areas where there had been complete destruction of the buildings they were usually replaced by apartments that the poor people who had lived there previously couldn't afford, and one of the intense purposes of this area was to provide a certain amount of units into which these people could live and continue to live in the area they had lived in prior thereto.

I think this was being accomplished up until the

point in and around 1970, '71. You can't fix it at an exact day and time. It is my opinion that as we introduce a number of units for families of low income in excess of that which will be accepted by a majority of the people, and I say socio-economic advisably because it is not necessarily a problem of either income or of race, it's a mixture of both.

Now, once you get beyond that number, you will tip your community and eventually you will end up as you did in Harlem and other parts of the City with a ghettoized area.

Q Would you say that the conversions of Sites 4 and 30 to public housing has implications in connection with the various aspects that you have testified to?

A Yes, sir.

Q Would you say that the conversion of scheduled middle-income housing to low-income housing influences that situation?

A It influences --

MR. GOLD: Objection, your Honor, no --

THE COURT: Sustained. It's leading, too whatever else there is.

Q Would you tell us the impact, as you see it, commissioner, of the conversion of middle-income Site 4 and Site 30 to low-income housing in connection with the answer you

just gave?

A Conditions within any geographic area are not static. They change constantly under your eyes. They are affected by what happens in the immediate vicinity and the manner in which they are treated by the media.

One act in and by itself doesn't necessarily create an effect. It must be taken into consideration of what else is happening because that's the way people make up their minds.

Unfortunately, in the area immediately surrounding the West Side Urban Renewal area, you have had an increase or renewed conversion of single-occupancy buildings, extensive occupancy in hotels by people being released from Rikers Island and from mental institutions, and you can see them visibly on the malls from Central -- on Broadway, along Central Park West on the benches, all of which have an effect within the Urban Renewal area.

If none of those things existed, then an increase in the number of public housing units within the West Side Urban Renewal area wouldn't tip it. To the extent that they exist and have an influence within the West Side Urban Renewal area, in my opinion any substantial number in excess of that which was once accepted by the various conflicting representatives within the community and the elected officials

of the City of New York, would constitute a pushing over the tipping point.

THE COURT: All right. We will take a short recess.

(Recess.)

THE COURT: Please proceed.

BY MR. MORRIS:

Q Commissioner, did you have occasion, in connection with your being a member of the New York City Housing Authority, to prepare, in connection with a conversion of Site 30 from middle to low-income housing, a draft environmental clearance work sheet?

A I did.

Q I show you this paper and ask if this is a copy of the draft environmental work sheet that you prepared?

A It is.

Q Does your signature appear on that document?

A It does.

MR. MORRIS: I offer it inevidence.

THE COURT: Show it to counsel. Any objection?

MR. LAND: No objection, but a modification.

THE COURT: Yes.

MR. LAND: The document that Mr. Morris is referring to is one of the documents contained in the HUD study on the

National Environmental Protection Act.

I would like at this point, and Mr. Morris has so agreed, to offer into evidence the entire study and then that part of the study which represents material Mr. Fried worked on will be referred to. Therefore, you will have before you --

THE COURT: There's nothing that pleases me more than the reference to the agreement between counsel. That's fine.

MR. MORRIS: Your Honor, may I be heard with respect to that?

THE COURT: Wait a minute. Didn't you agree on it?

MR. MORRIS: I want to make a reservation. I have no objection to the introduction of the exhibit except --

THE COURT: Hold it.

MR. MORRIS: -- that there are certain questions of the relevancy of some of the documents which are annexed to that and I reserve my right to object to some of those documents.

THE COURT: Very well.

MR. MORRIS: And a motion to move to strike at a later date should we deem it advisable at the appropriate time.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

THE COURT: All right.

(Government's Exhibit E received in evidence.)

MR. MORRIS: Your Honor, I would like, for purposes of convenience of identification, that the draft environmental clearance work sheet, which Mr. Fried prepared for the Housing Authority, be identified as Defendant's Exhibit E1 because there are many documents in that exhibit.

THE COURT: In E. There are many documents comprising E?

MR. MORRIS: Yes.

THE COURT: Very well.

MR. LAND: That was the point of introducing this now. We will give to your Honor -- this is the portion which Mr. Fried worked on -- we will give it to your Honor so you might be able to follow along with the questions and answers. That way we don't need the additional exhibit.

THE COURT: Fine. Thank you. Would you mark it then.

(Plaintiff's Exhibit E1 marked for identification.)

Q Referring to Defendant's Exhibit E1, Commissioner, does that exhibit contain reference to the quality of the built environment?

A I don't recall that it does.

Q Does it contain reference to the fact that the

project is a controversial project?

MR. LAND: Objection to the word controversial.

MR. MORRIS: Your Honor, may I explain?

These questions are related to HUD Federal Register, Department of Housing and Urban Development Regulations which Section 1390.1, subdivision 2, refer to the terminology to be evaluated in connection with this type of environmental evaluation and the language I just used in my question is taken directly from the regulation itself.

THE COURT: All right.

MR. MORRIS: The regulation so provides.

MR. LAND: We wish to strike Mr. Morris' statement characterizing the regulation. The regulation will speak for itself, rather than his characterization of it at this time.

THE COURT: Well, I don't give that much weight, any weight, to what he said on it. He is just telling us why he used that expression and he has given me good reason to allow it in the question.

What is your answer?

A I did not.

THE COURT: Next question.

Q Does it use the term urban blight?

A It does not.

Q Or urban decay?

A It does not.

Q Or the physical dimensions of the environment?

A It does not.

Q The social dimensions?

A No.

Q The aesthetic dimensions?

A No.

MR. MORRIS: That's all, your Honor.

THE COURT: Very well.

Cross examination.

CROSS EXAMINATION

BY MR. LAND:

Q Mr. Fried, you referred to the number 2500 low-income units in your direct testimony.

Could you tell the Court whether that figure represents the maximum number of low-income units which would be built iwthin the West Side Urban Renewal area?

A The number 2500 was not a precise --

Q I direct the witness to answer that question yes or no.

THE COURT: Yes. Please answer it yes or no.

A Please repeat the question.

THE COURT: Would you read the question again, Mr. Court Reporter.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007

(Question read.)

A I cannot answer the question.

Q Why?

A Because it was not an exact figure. It was an approximation.

Q Then was it to be a maximum figure?

A The figure called for in the Urban Renewal Plan as approved by the Board of Estimate --

Q I did not ask that. If it was an approximation, then, was it to be a maximum figure?

A Yes.

Q It was to be a maximum figure?

A Yes.

Q And do you have any documents that say it is to be a maximum figure?

A Plaintiff's Exhibit 1, a statement by Mayor Wagner, used the figure 2465.

Q Does it say it was to be a maximum figure? Is that a statement --

THE COURT: Sorry. You asked a good question but I am going to allow him to answer.

Go on and finish your answer.

A Plaintiff's Exhibit 8, which is the official final plan approved by the City Planning Commission and which was

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

adopted by the Board of Estimate, Plaintiff's Exhibit 6 used the figure of low income units of 1630. Plaintiff's Exhibit --

MR. LAND: Excuse me. Your Honor, I ask to strike the testimony. I asked the witness does he have any documents which state that the figure 2500 was a maximum figure. The answer is either yes or no.

THE COURT: I am going to allow him to finish the answer. You may then move and do what you want but now he is going to finish the answer.

I would have asked that question whether you asked it or not.

On what do you base your statement, and you say you are basing it on these documents?

A That's right.

THE COURT: Go ahead.

A Plaintiff's Exhibit 2, a statement by Mr. Nathan, the Administrator of the Housing and Development Administration, used the figure 2500.

Plaintiff's Exhibit 4, which was Mr. Nathan's statement before the Board of Estimate, dated October 25, 1967, uses the figure of 2500 units.

THE COURT: Are you finished?

THE WITNESS: Yes.

THE COURT: Go ahead.

Q They are the sole statements you rely upon, then, for your testimony that 2500 was a maximum figure?

MR. MORRIS: I object. His testimony was that he relied on a lot more. He said that statement was made many times and these are just illustrations of statements from the exhibits themselves.

THE COURT: Sorry. Objection overruled. The witness is asked a proper question and he has a right to answer it. If he wants to correct it, he can do so.

What is the pending question? Read it again to him, please.

(Question read.)

A No.

Q What other statements do you rely upon?

A Statements that were made in meetings in which I participated with the Mayor of the City of New York, the Chairman of the Planning Commission of the City of New York, Mr. Felt, Mr. Mollen, who was the Chairman of the Housing and Redevelopment Board and myself, as a member of the Housing and Redevelopment Board, that the figure of 2500 units would be acceptable to the diverse interests wtihin the area and that a statement should be -- it was agreed that a statement should be made before the Board of Estimate in support of

approval of the final plan of the West Side Urban Renewal Project area that it was the intention of the City of New York to provide 2500 units of low-rent housing within the Urban Renewal Project area, including a number of sites immediately adjacent thereto.

Q These oral statements you referred to then arein the context of the number of units which would at that time meet theneeds of the community, is that correct?

A That's correct. And would be acceptable.

Q And would be acceptable to the community?

A Yes, sir.

Q From that you then draw the inference that that was a maximum figure?

A Because thatfigure was reiterated on subsequent occasions by people authorized to speak on behalf of the City.

Q Was that figure also a minimum figure?

A I would say yes.

Q In other words, it is exactly 2500 units, not one more and not one less, is that correct?

A No.

Q Then what is it?

A I have tried to indicat that it was a general area of agreement. It wasn't 2500 so that one more would be horrible

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

and one less would deprive the community. It was a figure that we would strive to take care of the people who had to be relocated and these things do not remain static. Conditions change within an area.

The estimated number of units to be provided varied over a period of years from 400 to 2500.

MR. LAND: would you mark this as Government's Exhibit F, please.

(Government's Exhibit F marked for identification.)

Q Mr. Fried, I show you Government's Exhibit F for identification and could you tell us what this is, if you know.

THE COURT: Yes or no.

A I have to look at it first.

This is a resolution --

THE COURT: No. Can you tell us?

A Yes.

Q What is it?

A It is a resolution adopted by the Board of Estimate and certified as a true copy by the secretary of the Board of Estimate.

MR. LAND: I offer this in evidence, your Honor.

MR. MORRIS: What is the date?

MR. LAND: True copy of resolution adopted by the

Board of Estimate on December 9, 1966. 622

MR. MORRIS: No objection.

THE COURT: Received. Mark it in evidence, Mr. Clerk, please.

(Government's Exhibit F received in evidence.)

Q Mr. Fried, I again hand you Government's Exhibit F in evidence and ask you the total number of low-income units that the Board of Estimate provided for on that date?

A 2559.

Q Is that indicated to a maximum in the resolution?

A It doesn't say so.

Q Is it indicated to be a minimum in the resolution?

A Doesn't say so.

Q Let me read it to you.

"Resolved by the Board of Estimate that the Housing and Redevelopment Board is hereby directed to provide as it has stated it can in the redevelopment of the West Side Urban Renewal area for a minimum of dwelling units for families of low-income in accordance with the following schedule."

Did you hear what I just said?

A Yes, sir.

Q Does it say a minimum?

A It does. I read it incorrectly.

Q The board, Mr. Fried, in which you held office in 1966 was the Housing and Redevelopment Board, was it not?

A It may have shifted at that point from H.R.B. to H.D.A. I am not sure of the exact date.

Q But in any event, the board that the resolution referred to in Exhibit F is the board of which you were a member, is that correct?

A It is.

Q And that is the board which this resolution directed to construct the low-income units, is it not?

A It is. Or it was.

Q Mr. Fried, you conceded that you were in error in reading the Board of Estimate resolution that specified a minimum figure of in excess of 2[illegible]0 units, is that correct?

A That's correct.

Q And you read the document before you testified, did you not?

A Hurriedly.

Q You have no doubt that that document is genuine, do you?

A In view of the fact that there is a certification by and a U.S. Government official has submitted it as such, I would assume it is.

Q Do you have any doubt that it is not a genuine

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4000

resolution actually adopted?

MR. MORRIS: I will object to that. Nobody has raised any question about the resolution.

THE COURT: But he still has a right to test the quality of the witness' testimony. He has a right to show, if he can succeed, that the witness was reckless at his testiomny or he will grab at anything or say anything. That is his right on cross examination. I have got to give him that opportunity. Whether he is successful or not remains to be seen. Objection overruled.

What is the pending question, Mr. Court Reporter, please?

(Question read.)

THE COURT: You did not mean that in that way, did you? That it was not? Want to reframe it?

MR. LAND: I will strike it.

THE COURT: You don't strike it. You make application to the Court.

MR. LAND: I make application to the Court.

THE COURT: When the time comes when you become a judge, then with the few little prerogatives that are remaining -- by the time you get there, there won't be any.

Q In view of the Board of Estimate resolution,

Government's Exhibit F, which states that there should be constructed 2,559 units as the minimum number of units of low-income housing to be constructed in the West Side Urban Renewal area, do you want to change your testimony that you believed that 2500 units was to be the maximum number of low-income units?

A Yes.

Q And please change your testimony as you see fit.

THE COURT: How do you wish to change your testimony?

Q How do you wish to change your testimony?

A To the effect that the provision of the Board of Estimate is that the minimum should be as contained in Plaintiff's Exhibit F, the resolution of the Board of Estimate of 1966.

THE COURT: You mean Government's Exhibit F?

THE WITNESS: Government's Exhibit F.

Q I refer to Plaintiff's Exhibit 2, Mr. Fried. I hand you Plaintiff's Exhibit No. 2 which I believe you identified previously as the written material you referred to as forming the basis of your opinion that there would be a maximum of 2500 units. Is that correct? Plaintiff's Exhibit 2?

A Yes.

Q I show you page 2 of that exhibit and ask you if you can tell me from that exhibit the total number of units of low-income housing to be produced?

A 2559.

Q And is there any indication whether or not it is to be a maximum or a minimum number?

A It is listed as minimum for low-income.

Q Is that an indication of a minimum number?

A An approximation.

Q It is a minimum number, not a maximum, is that correct?

A An approximation of the minimum because it is immediately followed by the statement, "In the past, the committment for 2500 low-income units has been a hope."

Q Mr. Fried, in view of the fact that a document you relied on to support your conclusion that there would be a maximum of 2500 units in fact indicates that there will be a minimum of 2559 units, do you wish to change your testimony that you are of the belief that not more than 2500 units would be constructed?

A No, sir.

Q You do not?

A No, sir.

Q Notwithstanding this document?

A I stated --

THE COURT: Notwithstanding --

Q Notwithstanding Plaintiff's Exhibit 2?

A The figure 2500 was used as an approximation and I so testified. It did not mean 2501 or 2499, it was an approximation and the ultimate figure depends on, in very many instances, the configuration of the land that is used and how many units you can get on and whether you are building a large number of units of small apartments or a small number of large apartments and you adjust that as to the needs of the community when you get ready to draw the architectural plans of the building.

So that the various officials representing the H.R.D. and the H.D.A. and the City of New York used the figure 2500 as a rule of thumb.

Q Let me say, you say the figure may be adjusted to meet the needs of the community, is that correct?

A That's right.

Q That means it can be adjusted either upward or downward, is that correct?

A Yes, sir.

Q And it would be proper to adjust it upward to meet theneeds of the community, is that correct?

A Could very well be. It was done several times before

from 400 up to 2500.

Q If the needs of the community require 3000 units of low-income housing, would it be proper and based upon your sum total of your knowledge of the political means by which this 2500 figure was arrived at, the various documents which indicate the purpose of the low-income units, would it be proper, then, to provide for 3000 low-income units if they were needed?

A If at the time the issue was being presented --

Q Let's say today; being presented today.

A I think it would be improper.

Q Why?

A Because I think it would tip the area.

Q 3000 would tip the area?

A I think so.

Q Why?

A Because of what has happened in the surrounding area and what is happening within the area. Those factors I have testified to earlier.

Q Where did you obtain your knowledge about tipping, Mr. Fried?

A Over a period of, well, since about 1955.

Q You knew about tipping in 1972, did you not?

A I did.

Q Throughout 1972?

A Yes.

Q Quite knowledgeable about tipping?

A Knowledgeable.

Q And if you had the belief that one of your Housing Authority developments would tip an area and you feel very strongly about tipping, don't you?

A Yes, sir.

Q You would certainly tell the appropriate public official, would you not?

A I would.

Q And if you were called upon in 1972 to indicate social factors in repect of a low-income housing project, you would, as part of those social factors, indicate tipping if tipping would occur in your judgment, would you not?

A With respect to what area?

Q West Side Urban Renewal area.

A If it were confined to the West Side Urban Renewal area, of course.

MR. LAND: Your Honor, I am going to refer to Government's Exhibit E which is before you and we are going to go through there and check Mr. Fried's statements which he submitted to HUD in respect of tipping.

THE WITNESS: With respect to what area?

Q The West Side Urban Renewal area.

A It is not as I remember.

Q We will get to that, Mr. Fried.

I show you the --

MR. LAND: Does the Court have --

THE COURT: Yes. You were good enough to give me a copy.

MR. LAND: Let me get the relevant portions that we are going to be dealing with now, beginning on this page here and the succeeding pages.

THE COURT: Thank you very much.

MR. MORRIS: Would you tell me where you are working from, Mr. Land?

THE COURT: Mr. Commissioner, you have before you a copy of what?

MR. LAND: Government's Exhibit E, your Honor.

THE COURT: There it is.

MR. MORRIS: You are referring to E1.

THE WITNESS: I am presuming that is so. This is not marked.

Q And thatportion of the exhibit which we have opened for the Court --

THE COURT: Is that the same as E1?

MR. MORRIS: Yes, your Honor.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007

Q Now, the first two pages, Mr. Fried, appear to be a form which is completed, is that correct, a completed form?

A Well, let me explain this. The HUD regulation is --

Q I don't want that. Answer my question.

THE COURT: He is entitled to it. I am sorry but you must.

Does it so appear? Yes or no.

A Yes.

THE COURT: All right. Because Mr. Morris will be able to take you over on redirect and correct anything, if he thinks it ought to be done.

Right now you are being cross examined and he has a right to insist on a yes or no answer.

Q And on the second page of the form there is a date, January 26, 1972; is there not?

A There is.

Q And to the right of that there is a copy of a signature?

A There is.

Q Is that your signature?

A It is.

Q Did you in fact sign this document?

A I did.

Q I refer you to the first page of the form, the last paragraph marked H.

MR. LAND: Does the Court have that? H.

THE COURT: Oh, yes.

Q I would like to read that paragraph. Excuse me, before we get there, I would like to first ask you whether this form required you to answer the questions indicated thereon?

A Yes.

Q Right. Was this form submitted to the Department of Housing and Urban Development in connection with application to convert Site 30 from middle-income housing to low-income housing?

A It was.

Q Therefore, the naswers to the questionnaire would pertain to this application?

A May I withdraw my answer? This application was submitted in pursuance of a request for approval by HUD of the use of Site 30 for low-rent public housing.

Q Fine. Dealing iwth Site 30, not some other site.

A Yes.

Q H, and I read, "Environmental impact (beneficial and adverse) of proposed project or activity (identified

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

land use aspects): Environmental aspects of the site, including natural hazards and all deviations from applicable HUD policies and standards; pollution aspects, et cetera. Environment includes physical, social and aesthetic dimensions."

And in response to that question, you say "See the attached sheet"; is that correct?

A It is.

Q And the attached sheet has approximately a dozen pages and it is entitled, is it not, "West 91st Street-Columbus Avenue area (West Side Urban Renewal area) Site 30", is it not?

A It does.

Q The first category in that sheet, the one in which you described the proposed project; is that correct?

A It is.

Q You indicate there that the proposed project contained a total of 160 units; is that correct?

A It is.

Q Of which a total of 32 of those 160 units will be for the aged; is that correct?

A As I recall the plan and project --

Q Excuse me. Does the form --

A The form says so.

Q A total of 32 of the 160 units will be for the aged?

A It doesn't say they will be for the aged, next to each one there is a parenthesis and it says "aged."

Q Fine. Would that indicate that they're intended for the aged?

A It indicates that --

Q Would it?

A They could be used for the aged.

Q Fine.

Mr. Fried, as we go through this factual matter, matters contained in this document, am I correct in assuming that at the time you wrote up these facts you believed those facts to be true?

A I did not write these up. They were done by staff but I did believe them to be true.

Q As of the date yousigned the application form in January of 1972?

A That's right.

Q Indicated in the heading under description of the project, your staff and yourself, under your signature, state that "This public housing project will be an integral part of the West Side Urban Renewal area"; is that correct?

A It is.

Q Does it further state that "It will serve the needs of low-income families"; is that correct?

presume that HUD would rely, to some extent, upon a form

A It is.

Q Does it state that the low-income families it will serve are those who were displaced during the course of re-development?

A Will you repeat that question?

Q The low-income families who will be served, are they families who have been displaced during the course of redevelopment?

THE COURT: Does it not so recite?

A It so recites.

Q Doeit further indicate that the building to be constructed will be of satisfactory aesthetic quality?

A It says "We will strive to achieve it." Veryoften there's a difference of opinion as to whether --

THE COURT: Strike that. He merely asked does that so appear in this document. That's all. Does it say so?

A It says "We will strive to achieve it."

THE COURT: Very well.

Q Do you generally achieve your objectives?

A Not always.

Q Generally?

THE COURT: That was a goal; is that right?

A There's a difference of opinion among architects

whether we do or don't.

Q Let me ask you this: If the Court authorizes the construction of Site 30, will you use your best efforts to achieve quality aesthetic architecture?

A Yes.

Q I refer now to the second page of the statement, the last sentence of the first paragraph. Do you have that, Mr. Fried?

A Yes, sir.

MR. LAND: The Court?

THE COURT: Yes, sir.

Q "The proposed project is aesthetically and homogeneous with its surroundings;" is that what it states?

A It does.

Q And that was true, then, as to your belief at that time?

A Yes.

Q Further on down in that second page do you indicate that the proposed project will provide parking for 20 cars?

A Yes, sir.

Q The fact that the project will provide parking for 20 cars, does that not mean that to some extent this project will alleviate the traffic congestion to which you referred earlier in your direct testimony?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: COrtlandt 7-4580

A No, sir.

Q In other words, it makes no different whether the project does or does not provide for parking in terms of parking congestion?

A 20 spaces more or less on the West Side is meaningless.

Q 20 spaces is meaningless?

A Yes, sir.

Q Why would 20 spaces be meaningless?

A There's a tremendous number of cars on the West Side.

Q Would your concept of meaningless apply to other areas in which an insignificant number is added to a total; you would say that would be insignificant?

A It would be relative.

Q In other words, the addition of 20 parking spaces in the upper West Side would have no significance whatsoever on the parking congestion and traffic congestion in that area?

A It would be so minimal you wouldn't notice it.

Q On the next page, Mr. Fried, do you indicate certain public facilities that will serve the proposed site on Site 30?

A Facilities throughout the West Side.

Q That will serve the proposed site?

A Yes.

Q And there youindicate, correct me if I'm wrong --

THE COURT: Excuse me. It says "public safety facilities."

Q "Public safety facilities serving proposed site"?

THE COURT: Yes.

Q There you indicate, I believe, four fire departments; is that correct?

A Yes, sir.

Q Do you know, of your own knowledge, whether those fire departments are serving the area adequately?

A I don't, sir.

Q You indicated there are four police stations?

A That's right, sir.

Q You indicate that there are five health facilities; is thatcorrect?

A Yes, sir.

Q And presumably by indicating these public safety facilities serving the site you mean that people residing in Site 30 would have the benefit of the services offered at these three types of institutions?

A No, sir.

Q You don't mean that?

A No, sir.

Q What do you mean when you say "Public safety facilities servicing proposed site"?

A At the time this was about to be prepared --

Q Excuse me. What do you mean by the phrase, and I quote, "Public safety facilities servicing proposed site"?

A We were instructed by HUD to list all of the facilities in these categories in existence on the West Side because the regulations --

Q Excuse me.

MR. MORRIS: Your Honor, I request he allow the witness to complete his answer.

THE COURT: No, I think I will allow him to proceed that way. You may finish your answer.

A We did not know how to fill out this form because the regulations hadn't been adopted in public. We were presented with the form, my staff advised me that they met with the representatives of HUD, and they filled this out in accordance with oral instructions given them. "List all of the facilities on the West Side."

Now, when I questioned them about it, obviously the policemen in a precinct which doesn't cover the West Side Urban Renewal area are not going to be of much assistance to thepecple who reside within it. And they told me this is

what the HUD told us to do. "List everything there that is on the West Side: The schools, the health facilities, the police stations", which is a way in which they formerly used to handle an urban renewal application.

THE COURT: You mean physically located?

A Yes, sir.

Q In other words, you statement here is inaccurate, then, isn't it? Your statement that the following is a list of "Public safety facilities servicing proposed Site" is inaccurate?

A To the extent that within certain of these districts they don't service the West Side Urban Renewal area, it is.

Q And you knew it was inaccurate when you approved this; is that correct?

A Yes, sir.

Q Did you tell anybody it was inaccurate?

A I discussed it with my staff and I was advised this is the way HUD said, they don't have the regulations yet, they don't know what to do.

Q Did you tell anyone at the Department of Housing and Urban Development that the statement "Public safety facilities servicing proposed site" was inaccurate?

A Did I personally?

Q Did you personally.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

A No, sir.

Q Did any member of your staff?

A I don't know.

Q Let me understand this, then, Mr. Fried: You, knowing that a statement contained in a product produced by your office to be submitted to HUD was inaccurate, nevertheless you permitted that statement to be submitted to HUD without informing them or knowing that they should be alerted or would know that it was inaccurate?

A I did not say that. I said my staff advised me that HUD instructed them to fill out the form by listing all of the facilities available on the West Side.

Q Why didn't you state that?

A My staff advised me they were instructed to do it. I think you should know that when you deal with an agency which funds you, you do what they tell you or you don't get funding.

Q Who told you to do it this way at HUD?

A My staff advised me that they were advised by the people with whom they deal. I don't know the names.

Q You are in charge of that staff, are you not?

A Administratively?

Q Yes.

A No, sir.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

Q Well, you signed the statement here, did you not?

A Yes, sir. That was an administrative function, one of those to which I am limited by the law and the regulations of the Housing Authority.

Q And you signed this statement knowing it to be false; is that correct?

A I signed this statement after the staff advised me that the Department of Housing and Urban Development, to whom we were applying, requested them to fill or instructed them to fill it out this way andlist these facilities.

Q Did you bring it to the attention of your lawyers or any public official that you were, at the instruction of HUD, making false statements in respect to an application for a housing project?

MR. MORRIS: I will object to the characterization as a false statement, your Honor. The witness has explained the situation and explained the nature of the statement, and the characterization, in my opinion, is inappropriate.

MR. LAND: It is still false, your Honor, that's the point.

THE COURT: The witness has already testified that the statements were not correct, butthat they were filled out in that fashion in order to satisfy the instructions of the government authority that has the money.

So if you would substitute you knew it was inaccurate for false, we might get somewhere.

MR. LAND: I will substitute the word inaccurate for false.

THE COURT: You knew they were inaccurate; isn't that so?

A Yes, sir.

THE COURT: Very well.

Q Mr. Fried, I bring you back, then, to the certification above your signature. Now, I will read that certification to you.

MR. LAND: Does the Court have that in front of it?

THE COURT: Yes, sir.

Q I quote, "The applicant sponsor identified in Block A hereby certifies that the information furnished in the draft environmental clearance work sheet is true and accurate to the best of his or its knowledge. So signed, Walter Fried"; is that correct?

A Yes, sir.

Q And did you read the certificatic prior to the time you entered your signature?

A I did.

Q And you entered your signature knowing that there

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

were inaccurate statements contained in here?

A That there were some innacurate statements, yes sir.

Q Did you ever tell anybody that there were inaccurate statements contained in this document?

A My staff was instructed --

MR. LAND: I move to strike.

A I personally?

Q Yes.

A I already testified I did not.

Q Do you know approximately how much money the Department of Housing and Urban Development was going to spend or was planning to spend on Site 30?

A I don't know they were going to spend any. I know what they have committed under the annual contribution contract.

Q How much have they committed?

THE COURT: Mr. Land, I have allowed counsel on both sides to come close to the witness. The trouble is, when you do that he lowers his voice and we really can't get him. If you don't mind.

Hereafter, if counsel will be good enough, all counsel, to please stand at the lecturn, then the witness will raise his voice.

A Mr. Land, I would have to refresh my recollection. I am not sure I have the documents here.

Q Would the number 6,100,000 refresh your recollection?

A It would be in that vicinity.

MR. LAND: One moment, your Honor.

THE COURT: Surely.

Q Mr. Fried, do you know whether or not there are any criminal penalties for making a certification to which you certified that the information contained therein is accurate to your best knowledge and belief when in fact when you execute the certification you know that some of the information contained therein is inaccurate?

A I don't.

Q Mr. Fried, is this the only time in your history as an administrator, a public administrator, where you have wilfully certified that a statement was accurate to your best knowledge when you knew in fact that the statement was inaccurate?

A I don't believe I did.

Q At any other time?

A Yes, sir.

Q This was the only time?

A To the best of my recollection, yes.

Q Why did you do it this time?

646

A I was advised by members of my staff, who had been dealing with the Department of Housing and Urban Development, thatthey were informed that no regulations had been issued as tohow these forms should be filled out and they were very much in doubt and in confusion. And it was agreed upon then that they would submit statistics with respect to the entire West Side.

Now, in most instances each of these facilities services the project area. Now, when I looked at it and I saw that police stations have districts and fire stations have districts, I said to the, the West Side Urban Renewal area is not within this district. Well, their answer to me was that HUD said that under certain circumstances in some instances a fire engine, which is located on West 77th Street, will go out of its district, if it is a two-alarm fire or a three-alarm fire. In some instances, if there is a particular incident happening on 100th Street, police from 68th Street will be called up.

So that although it may be considered inaccurate to say that the project is serviced out of this area, as long as under certain circumstances somebody will go from there, it will be all right to say it does so.

I said under those circumstances, all right.

Q Mr. Fried --

A Now, whether this is exactly accurate --

Q Mr. Fried --

THE COURT: I'm sorry, Mr. Fried. Wait a minute.

With all due respect, we all learn. That is one of the lessons we are told about cross examination. You had an answer from the witness. You could have argued all you wanted and with propriety that this makes him unreliable. No, you weren't content with that. You wanted a bill of particulars. Now he is going to diminish what there was before and you don't like it and you want to halt him.

The answer is no, you brought it on. You should have been content with his answer before.

You may proceed.

A If the question is, will these units in the normal course of business service this project area, the answer is no. If the question is under unusual circumstances on some occasions will they service it, the answer is yes.

When they explained that to me, I said all right, if HUD wants this in order to give the City of New York X-million dollars tobuild a project, let's give it tothem the way they want. And when they will ultimately present regulations, then they will know what to do. I therefore signed it.

Q Mr. Fried, you are aware that to some degree the

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

Department of Housing and Urban Development would rely upon the statements contained in this document, which you submitted, in determining whether to approve the conversion of Site 30 from middle-income to low-income housing?

A I do not know the weight they would apply to an application filed by an applicant or how much weight they would apply to the studies that are made by their own staff.

Q But some weight?

A Some weight, yes.

Q And you are also aware that if the Department of Housing and Urban Development approves a plan to convert Site 30 from middle-income to low-income housing, and if the Department of Housing and Urban Development relies upon the factual data which you supplied, then if that factual data is shown to be wrong, then perhaps HUD's determination will be shown to be incorrect?

A HUD has no jurisdiction as to what the re-use of thatland should be. It is strictly within the control of the Board of Estimate of the City of New York.

The application that was made to HUD was for the financing of low-income housing on this project area if in fact it would ultimately be decided by the Board of Estimate that this would be used for that purpose.

Now, in pursuance of such an investigation, I would

presume that HUD would rely, to some extent, upon a form which is filled out in accordance with their instructions and supplied to them. The weight and value that they would give, as differentiated from the extensive studies that they said their own staff would give to the area and to the project, I don't know.

Q Let me ask you this, ask it another way.

Take a hypothetical -- assume thatyou were asked to perform some function in your capacity as an administrator and you say, before I do anything I want some facts. People give you facts. You believe those facts to be true and you have made your determination.

Sometime later, it is shown that those facts were not facts; they were errors.

Would you not agree that in some situations you may have to change your determination based upon a change in the facts brought to your attention?

A Certainly.

Q And that hypothetical may apply in this situation with Site 30, where you represent facts to be true, assuming the Department of Housing and Urban Development relies on those facts, makes a determination, and subsequently those facts turn out to be false.

In some instances, then, perhaps HUD's determination

may be required to be changed, correct?

MR. MORRIS: I object, your Honor, owing thatthe answers are not false; they have not been established to be false. The witness has explained the basis for the answers and the characterization of them as false is unjustified and unsound and I object to it.

THE COURT: I have suggested before that you use the word incorrect but the question is good and with the substitution of the word incorrect for false, what is your answer?

A My answer is it would depend on the fact which was inaccurate. For instance, if the relocation requirements stated that we need or there are 5000 families to be relocated and their eyes are blue and it turns out that the 5000 families have brown eyes --

Q Try skin instead of --

A -- that inaccuracy would not affect or cause a change in condition.

On the other hand, if the recital was 5000 families and the fact was 20,000 or 25,000 families, then it would.

So, hypothetically, I can't answer it unless you tell me the inaccuracy.

Q It would depend on the degree of the significance of the facts?

A Right.

Q Mr. Fried, other than the inaccuracy in respect to one fire department which would normally not service the area except in the case of a dire emergency, except with respect to that inaccuracy, are there any other factual ina curacies in this report?

A Yes, sir.

Q Will you please indicate them to me?

A Well, I can't make out the letters. I think it's letter L on the sheet contained in -- is this Defendant's Exhibit E?

Q Yes.

MR. MORRIS: El.

A Where it says "Views of local groups". It says, "There are no known groups in opposition to this development."

I did not discover this until I examined this in Court today because, atthe time I was asked to sign this document, I was told that all of the relevant material was in the fact sheets and I read the fact sheets.

MR. [illegible]: I think for the Court's elucidation, this lawsuit was commenced in 1971, so that theoretically there was a group in opposition prior to the time Mr. Fried executed his signature.

THE COURT: Thank you. That makes it clearer.

A If you will permit me to read the rest carefully, I will see if there are any others.

THE COURT: Yes; do so, so that by the time you are through with your testimony, you will then have this record before me disclose with particularity and without anything being omitted in what respects E in evidence is inaccurate.

MR. LAND: Your Honor, to save time at this juncture, perhaps we can go on to another line of questioning other than this report and then Mr. Fried would report back to the Court under oath whether he has found or has not found other inaccuracies.

If he says no, that ends the matter. If he says yes, we will go into it.

Would that be satisfactory?

THE COURT: Except my mind is on this and I would like to clinch the point now.

A And I do not concede the inaccuracy. I said it depends on how you look and evaluate the facts.

THE COURT: Well, Commissioner, let's face reality.

I was going to ask you this later but I will ask you right now.

When, as a lawyer and as a public official, you signed E, knowing that the explanation of H, the information

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

supplied under the heading "Public safety facility servicing proposed site" were in fact inaccurate in certain respects, and you have explained how that came about, did it not occur to you then that without saying anything further there might have been the possibility that HUD, after having complied with the application, might later on come in and say that it had been imposed upon by the submission of inaccurate information on which it relied in order to fulfill the goals sought by the application?

THE WITNESS: No, sir, because of the peculiar personal relationship between our staff and that of HUD, who worked together almost on a daily basis. We are two blocks away from one another and our people are constantly in their office and they are in ours. We have such a large volume of business and very often the two staffs work together and when my staff tells me they have discussed this thoroughly with the HUD personnel and that they understand it thoroughly and that our people did and they were told to fill it out this way, I believe them.

THE COURT: All right. Will you please go through the document and see whether there are any other inaccuracies, giving you the opportunity as Mr. Land himself suggests, to look at it later on, if you wish, to see whether it is absolutely complete and giving you an opportunity to amend,

if you want to.

A Now, In G.2, there may be the creation of a misunderstanding. You started to ask me about units for the aged. Now, in a plan and project approved by the Board of Estimate for this site, it calls for 16 units of housing for the aged.

Now, here the one-bedrooms are also marked aged. Now, the meaning of that is, and we know it and HUD knows it, is that the first 16 which are provided for in the plan andproject will be designed with special features for elderly people. However, by agreement between the two agencies, the one-bedroom apartments which are not specifically designed for the elderly may be used for elderly if there is a need therefor.

So that to say that the plan and project calls for 32 would be incorrect but 32 can be used, only 16 of which will be specifically designed for that purpose.

THE COURT: But the way it appears, one would not know that that is what you had in mind. When you say 16 and then in parenthesis, what in the world would anybody conclude except that those 16 were for the aged. I mean just answer that. What do you say to that? Isn't that so?

THE WITNESS: This was not submitted to the public, sir. It was submitted to the specific staff who knew what

our plan andproject was and this is customary in the normal course of our activities.

THE COURT: What else do youwant to point out with regard to E or inaccuracies in E.

A I am reading it, sir.

The last statement in G.2 is no longer true.

TEH COURT: Not "is no longer" but at the time that this was executed --

A There was a question in our mind whether, unless we went out to public bid as we sometimes do, that it could come in within the prototype limits.

It was suggested that we put it in this way, because there was an understanding that in the event it did not, the City of New York was committed to give us the difference between the prototype limits and what the bids would be brought in at. It is public bidding. So we couldn't necessarily in any event say "Yes, it will come in with the prototype".

They said do it, because in any event, you are going to get the difference from the City of New York, so we don't care.

THE COURT: Continue. What other instances of ir[illegible]cy appear in that Exhibit E.

A With respect to the recital of the schools, in all

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

of those instances I do not have complete personal knowledge of these but this is what is represented to us by the planning diivison of the Housing Authority and it is usually accepted as such.

THE COURT: As of the time that you executed this?

A Yes, sir.

THE COURT: All right.

May I ask, Commissioner, when did you last see before today, this portion of Exhibit E that we are addressing our attention to?

THE WITNESS: I believe it was the day I signed it.

THE COURT: Then I think you are right, Mr. Land --

MR. LAND: That is not an accurate statement.

THE COURT : That is what he said.

BY MR. LAND:

Q Did you see this last night?

A Is that what you showed me in your office last night?

Q Yes.

A Yes, then I did.

THE COURT: Then I think he ought to be given a chance to look at it more thoroughly.

I thought you wanted to make someother point between now and 1:00.

Will it take you long?

MR. LAND: I should say my cross examination of Mr. Fried will be quite extensive but I can go until 1:00 and use our time wisely.

THE COURT: All right.

MR. LAND: Thank you.

May I see Plaintiff's Exhibit 29, please?

Your Honor, I am going to be talking about a document. May I approach the witness to talk about it.

THE COURT: That is different. Certainly. Then you can't help yourself.

Q Mr. Fried --

THE WITNESS: I haven't finished this.

THE COURT: We are going on to something else.

MR. LAND: He is almost done. Maybe he can give us the ans0er now.

THE COURT: Referring to E1.

A I believe that is the only areas in which a question could be raised.

THE COURT: All right.

Q Fine. I will go back to that exhibit later.

THE COURT: What do you mean by going back? The record shows you showed him --

MR. LAND: Government's Exhibit E.

THE COURT: Government's Exhibit E. All right.

Q Mr. Fried, the instruction number 8 on the facing page of the work sheet, Exhibit E, requires some statement in respect of social aspects, does it not?

A It does.

Q Does your statement, the approximately eight or nine pages, contain any statement that the construction of Site 30 as a low-income housing project may cause tipping?

A No, sir.

MR. LAND: Excuse me, your Honor.

THE COURT: Yes, sir.

Off the record.

(Discussion off the record.)

Q Mr. Fried, your earlier direct testimony was to the effect that since 1970 there has been some deterioration in respect to the inability of buildings to become co-operative and instead they have become rental units; is that correct?

A No, sir.

Q What was your direct testimony on that point?

A My direct testimony was that in the processing of some of the Mitchell-Lamas which were ultimately constructed, and I gave no date because I don't remember, the original plan had been for them to be developed as co-operatives and they had been so approved by the Board of Estimate, and the

Housing and Development -- the H.R.B. or H.D.A. whichever it was atthat time, had received requests from the sponsors for permission to change from co-operatives to rentals, and that that had been done.

Q Okay. But are there many buildings becoming co-operatives in recent years?

A Some of the older rent-controlled structures, I am not sure whether within or immediately adjacent, have become co-operatives. This is a phenomenon that is going on in the West Side.

Q But in terms of the number of buildings up there, would you say that many of the apartments have become co-operative in recent years?

A I don't now how many.

Q Would you same many?

A There is a phenomenon going on.

THE COURT: By phenomenon, you mean there are more co-operatives now in existence than there were, let's say, a year ago?

A I don't know whether it is for a year, but there are more now than there were before, because less landlords deem it advisable to operate rental units.

Q There are more of what?

A More co-operatives in the older buildings.

Q In your testimony earlier, I think you indicated that if a building becomes co-operative, it adds to the stability of the area rather than if the building is simply a rental unit?

A Yes, sir.

Q Reading from one of the paragraphs of the study. It is not numbered by page, just one sentence here I would like to read.

MR. MORRIS: Where?

THE COURT: Of E?

Q Yes. It says, "In the general area of the proposed project, the current population is approximately 232,300. Whites constitute 80 percent, Negroes 12 percent, and the remaining populous is Puerto Rican."

A Where is that, what page?

MR. MORRIS: It is the page after the one on the fire stations and the police stations.

THE COURT: Oh, yes. Thank you.

MR. MORRIS: Top of the page.

THE COURT: Right. Do you see it, Commissioner?

A No, I don't. The one after the -- oh, I see.

Q The very top of the page.

A Yes. It so states.

Q Okay.

Do you know the ratio of whites to other people, percentage ratio of whites to other people residing in New York City?

A I don't.

Q Referring to Plaintiff's Exhibit 29, your staff has indicated, for example -- let me ask you this question first.

In respect to Plaintiff's Exhibit 29, under the columns entitled "At initial occupancy," can you tell us the approximate dates that the initial occupancy occurred?

A Yes, it is on the exhibit. Wise --

Q Okay. Then on this exhibit the numbers to the left of the housing units indicate the date of initial occupancy?

A And it so stated, "Initial occupancy."

Q There was a different handwriting and I wanted to doublecheck that.

A May I say this was originally prepared at the request of theCorporation Counsel and when I found out I asked them to give me a copy andin some instances updated.

Q Okay.

MR. GOLD: Your Honor, let me just clarify that. I did request the Housing Authority to prepare some statistics for me; however, that doesn't look like the sheet I received from the Housing Authority. I don't have mine with me. I

am not arguing that it isn't the same, that the numbers aren't the same. I just --

THE COURT: You have called it to my attention. It is clear, what you have to say.

Next question, please.

Q Part of your conclusion, Mr. Fried, that there may be tipping, is based upon the trends indicated on Plaintiff's Exhibit 29?

A Among others.

Q Would it be fair to conclude that any community which has a similar percentage change of racial population would then have at least one element of tipping?

A I don't think it is necessarily a question of race. It is a socio-economic class. The race is just one indication of it. I think it is generally accepted that as whites begin to leave a neighborhood, this is one of the deteriorating aspects of it.

Q Let me ask you: For example, as to the six projects indicated here --

THE COURT: In 29?

Q -- in Plaintiff's Exhibit 29, it is indicated that the total percentage of blacks has increased from 15.6 percent to 19.5 percent, which is an increase of 3.9 percent. In other words, on your testimony, then, an increase of blacks

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

by 3.9 percent is some indication of tipping; is that correct?

A No, it is not correct. I did not say that. I said it indicates a trend which, if continued, will cause it.

Q Indicates a trend —

A We are looking at trends.

Q Well, suppose the increase was one-tenth of one percent. You would still have an increase and you could still reach the conclusion that if that trend continues we will have tipping.

A Over a longer period of time.

Q Do you consider the increase of 3.9 percent of blacks in the West Side Urban Renewal area from the initial occupancy dates -- I'll read the years, 1965, 69, 65, 65, 65 and 63 -- would you consider an increase of 3.9 percent from those years, a period of approximately eight years, to be a significant increase of negroes?

A I wish you would explain to me how you got your eight years. Some of these were first occupied in '65, most of them; some in '69 and a few of the rehabs in '62 and '63.

Q I average it out to be about eight years.

A Your mathematics is faster than mine.

Q Excuse me?

A I say, your mathematics is faster than mine.

I would say that in view of what is taking palce in other projects of ours, as I examine them, once you start to get an increase, it accellerates and it is happening in

many other sections of the City.

Q Is an increase of black people within an area which your study showed had approximately a quarter of a million people, an increase of blacks by approximately 3.9 percent from the mid-60s until now, is that a significant increase in blacks?

A Low income blacks.

Q It doesn't say or indicate on that statement whether they are low income or not.

A This is low income housing. You can't go above a certain limit and get in.

That, plus the other factors, plus what is happening in the surrounding area, yes, it does.

THE COURT: There is an answer. Next question.

Q Do you know the increase in the black population, the percentage increase in the black population, over the past eight years?

A I think the only statistic I remember is that between 1960 and 1970 there was an outflow from the City of New York of approximately a million people and an inflow of the same. I think that is the figure I read.

Q And do you know whether the --

A Percentagewise, I haven't figured it out.

THE COURT: Gentlemen, I think you better come in

for two or three minutes to discuss, off the record, the matter of the length of testimony yet to be adduced.

(In the robing room - discussion off the record.)

THE COURT: There has been an off the record discussion in order to put counsel in a relaxed frame of mind and to avoid guessing, but I find that they have considered the problem, and have discussed it, with respect to the amount of time that will be required to complete this trial.

Now I am going to make a recital of what Mr. Land has said and if I am incorrect, you will then correct the record.

Mr. Land tells me that counsel agree, seem to agree, and Mr. Morris chimed in and said "yes," that it will require 15 more trial days, and Mr. Land said, "and I mean trial days of 7 hours a day."

When I pointed out that this was far in excess of what had been represented to Judge Weinfeld and from Judge Weinfeld to me, his answer was to the effect that as the case has progressed, the need to explore avenues of evidence have enlarged and, therefore, the time has enlarged and he admitted that much more time will be required than was anticipated at the time the matter of trial time was taken up with Judge Weinfeld.

Is thereanything that I have said that is incorrect?

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

MR. LAND: No, your Honor.

MR. MORRIS: We might add that our discussions with Judge Weinfeld related to the motion and the evidentiary hearing on the motion and we have now overcome that.

THE COURT: I know. It related to both ways. It related, according to Judge Weinfeld -- you have undoubtedly forgotten -- it was two-pronged.

You have given him a statement of an estimate of the time for the temporary injunction and an estimate of the time that the case in chief would take, because that is what he told me.

At any rate, the record must show that that certainly changes the picture somewhat and counsel will have to recognize that since there has been this change and time is far more extensive than originally anticipated, I will have to do the best I can and maneuver around with the calendar I already have in hand to see whether I can somehow meet what you feel is required.

At any rate, you remember the date that I said we would go over to. I leave today to fulfill my assignment elsewhere and what I said on September 21, the date I haven't got right now in front of me -- do you remember the date I said?

MR. GOLD: November 20 and 21.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE CORTLANDT 7-4580

THE COURT: Those dates stand, of course, unless I notify you within five days to the contrary.

I must say that what I figured, the plan I relied on in order to be able to meet the demands of this case, have been changed considerably by what you now tell me and I don't know just how I am going to manage to handle it.

I will let you know as quickly as I can. I will try to shift cases, if I can possibly shift them and, if I can't, you will just have to await the best that I can do under the circumstances, to try to find whatever time I can.

(In the courtroom.)

THE COURT: Let the record show I have had enlightened attention of counsel and I would be remiss if I didn't pause long enough to say that we are indeed fortunate to have counsel of understanding. They have a position that they believe in with all their might and main, and that is what makes a contest.

A limpid performance never develops truth. A performance that is full of ardor and zeal and determination evinces itself and in that way we arrive at truth.

So, that kind of spirit has been extremely helpful and I am appreciative to counsel.

I indicated on September 21 that we would go over and continue this case to November 20 at 10 a.m., unless I

notified counsel to the contrary. That stands, as of now, and I look forward with pleasure to resuming this controversy on the adjourned date.

Watch the Law Journal, because the facilities in this courthouse, by reason of the increase in the number of judges who are functioning here -- and remember, this was intended for twelve judges when it was built and there are now twenty-seven -- watch the Law Journal, which will disclose where we will be sitting and if you want to know, to double check it, don't hesitate to call chambers.

(Trial adjourned to November 20, 1973, at 10 a.m.)

- - - - - -

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Walter S. Fried (Resumed)	562	616		

EXHIBIT INDEX

	In Identification	In Evidence
Plaintiff		
28		563
29	586	587
Government		
E1	614	
F	621	622

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

TRINITY EPISCOPAL SCHOOL CORP., and TRINITY HOUSING CO., INC.,

Plaintiffs,

-and-

71 Civ. 4315

ROLAND N. KARLAN, ALVIN C. HUDGINS and CONTINUE,

Plaintiff-Intervenors

-against-

GEORGE ROMNEY, Secretary of the Department of Housing and Urban Renewal, et al.,

Defendants.

----------X

New York, N.Y.
April 22, 1974
10:00 a.m.

Before:

Hon. Irving Ben Cooper,

District Judge.

APPEARANCES:

DEMOV, MORRIS, LEVIN & SHEIN, Esqs.
Attorneys for Plaintiffs and Plaintiffs-Intervenors
By: EUGENE J. MORRIS, Esq.
MARTIN STUART BAKER, Esq., of Counsel

APPEARANCES (Continued):

PAUL J. CURRAN, Esq.
United States Attorney for the
Southern District of New York
By: DAVID P. LAND, Esq.
Assistant U. S. Attorney

ADRIAN P. BURKE, Esq.
Corporation Counsel for the City of New York
By: HADLEY W. GOLD, Esq.
Assistant Corporation Counsel

MARTTIE L. THOMPSON, Esq.
Attorney for Defendant
STRYCKER'S BAY NEIGHBORHOOD COUNCIL
By: JOHN de P. DOUW, Esq., of Counsel

LOUIS J. LEFKOWITZ, Esq.
Attorney General, State of New York
Attorney for State of New York
By: THOMAS R. McLOUGHLIN, Esq.
Assistant Attorney General

* * * * *

THE COURT: Good morning.

Will you call the matter, please. It is a continued trial.

THE CLERK: Trinity Episcopal School Corp. and Trinity Housing Co., Inc. against George Romney, Secretary of the Department of Housing and Urban Renewal.

Counsel, are you ready?

MR. MORRIS: Yes.

THE COURT: I take it that all parties are ready unless I hear to the contrary.

Gentlemen, before we proceed with the taking of

testimony, there are certain items that have not been passed on due to tne fact that a period of time was taken in an attempt to negotiate a favorable formula that proved to be a failure and we are now back in the courtroom.

We have before us in particular two motions that were left open pending those efforts at settlement: one, a motion to intervene as plaintiffs brought by Roland N. Karlan and Alvin C. Hudgins, residents of the West Side Renewal Area, and Continue, an unincorporated association composed of tenants, property owners and community groups from the area; and also a motion for leave to amend plaintiffs' complaint to include allegations with respect to the National Environmental Policy Act of 1969.

We will dispose of these motions as follows:

One. The motion for intervention is granted pursuant to Federal Rules of Civil Procedure, Section 24(b)(2). Plaintiff-intervenors are represented by the same counsel representing original plaintiffs and make the same demand for relief. Accordingly, their intervention would in no way prejudice the rights of the original parties or confuse the issues at trial. Moreover, as individual residents of the renewal area they may raise issues not raised by original plaintiffs appropriate for adjudication herein and possibly affect other parties before us.

While it cannot be said that plaintiff-intervenors would otherwise lack adequate representation such as might entitle them to intervention as a matter of right, in light of the common questions of law and fact we have decided that permissive intervention is proper.

Next. Plaintiffs' motion for leave to amend their complaint is granted pursuant to Federal Rule of Civil Procedure 15(a). The issue of whether the Department of Housing and Urban Development, otherwise known as HUD, complied with the mandates of the National Environmental Policy Act is central to this litigation and the proposed amendment would not prejudice defendants in any way.

At the time of filing the original complaint, which was October 4, 1971, HUD had not yet approved conversion of Site 30 from middle income to low income housing. Such approval was not given until December 28, 1972. Accordingly, plaintiffs should not be penalized for failure to allege environmental issues in the original complaint. Inasmuch as the motion for a preliminary injunction was withdrawn shortly after the filing of the motion to amend more than six months ago, the assertion that this motion is untimely or burdensome is no longer of any merit.

The next point I would like to take up with you relates to what we might briefly refer to as a settlement of

the factual issues. You may recall that during one of the sessions in chambers, Mr. Morris, on behalf of the plaintiff, handed to all present a paper. It was on November 20, 1973, that he did so, and there was discussion with regard to that paper. I see no sense in reading it. Let it suffice to say that I shall have it marked as a Court's exhibit. I have the original which was handed up to me.

Now, our reliable official court reporter has been good enough to furnish me with the stenographic transcript of November 20, 1973, and that relates to the paper to which I have just alluded. Let me read it to you. I read from page 4, lines 8 to 17, both inclusive:

"This morning Mr. Morris handed to all of us a six-point program. I see nothing to be gained by going into the merits of each one of those items. Suffice it to say for the purpose of the record that items 2 to 6, inclusive, seem to meet with a general sense of approval by all counsel. They all felt that items 2 to 6 could be resolved and that no one of those six items presented insurmountable hurdles and they felt that there was more than a mere indication, in fact there was a strong inclination, that those points 2 to 6 could be affirmatively resolved."

Unless I hear to the contrary, the Court will bear in mind that mutual proclamation, so to speak.

T2fol

THE COURT: In other words, we take it that there has been no retreat by anyone from the position declared on November 20, 1973.

Next. On October 10, 1973, plaintiffs' counsel moved that all the motion papers be considered as part of the trial records. At that time the Court reserved decision. We have in the interim reviewed all papers submitted in conjunction with this action and conclude that effective disposition of the matter requires that all papers be included within the trial record. Accordingly, that motion is granted.

Of course, what will take place in the future depends on the merits of each paper received on each motion on which we take action. Certain motions are perfunctory and are not particularly substantive and, therefore, there is no sense in burdening the record, but we will make our ruling with regard to the motion papers of each motion hereinafter placed before us.

The next point, gentlemen, is this: Shortly after the decision in Otero against New York City Housing Authority, 484 Federal 2nd 1122, Second Circuit 1973, plaintiff submitted a memorandum relating to that case. We regard Otero as of critical importance and, accordingly, would like to have responding memoranda to plaintiffs'

memoranda.

You may find some differences. You may feel that the Court would be going off course in adopting in toto the Otero ruling. I look to you for the benefit of your reaction.

I hope that I can have the benefit of your memoranda on that score on or before a week from today.

Gentlemen, won't you please proceed.

MR. MORRIS: May we approach the bench, your Honor?

THE COURT: Surely. with the court reporter? Is this off the record?

MR. MORRIS: Off the record.

THE COURT: Come into the robing room.

I am glad to see you here, Mr. McLoughlin, representing the state and I take it you are going to remain close to this matter?

MR. MC LOUGHLIN: I will remain close to it. There is a problem and I am glad we are going into the robing room.

THE COURT: Come in.

(Recess)

THE COURT: Counsel showed wisdon in having this off the record discussion as to reduce the amount

ojw 3

stenographic material. They raised four points.

Mr. Morris has appeals to argue in the appellate division this Wednesday afternoon and we honor his engagement and so this Wednesday we will sit until 1:00 p.m. because of Mr. Morris' prior engagements.

Mr. Land, on behalf of the government, has an appeal this Friday at 2:00 o'clock and, accordingly, this Friday we will sit until 1:00 in order to honor his commitment.

MR. LANE: That is a district court argument, your Honor, not an appeal.

THE COURT: I beg your pardon, the district court, thank you.

The second point were the schedules of teh tenant make up in the entire project. They have been prepared by Mr. Morris and submitted to his opponents and I was giving considerable encouragement by Mr. Gold, representing the City, and Mr. Douw, representing Strycker'Bay, that they would act on the proposed scheduled with relation to the present makeup, tenancy makeup within a matter of days. I count on them and I feel quite confident they will make good their promise.

The State of New York moved to interpose an answer. I heard no objection and I take it there is

none and the usual amount of time as provided by law in which to interpose an answer is granted.

I would like to have the record show that we hope that the Attorney General may see fit to allow Mr. McLoughlin to continue to be present as the representative of the State at all of these proceedings rather than be compelled to share the burden with someone else in his office while he, Mr. McLoughlin, absents himself in order to attend to other matters.

The continuity of this is extremely important and the knowledge that is gained from keeping abreast of developments can only be imparted by extraordinary labor and we hope that that will not prove to be the case.

Then the last point that was raised was with respect to exhibits and Mr. Land properly made mention of the needlessness of having exhibits repeated by actually having more than one copy. We should content ourselves with one copy and make reference to the exhibit number thereafter and I depend on counsel to see that that important item of housekeeping is strictly observed.

Now, if I have not stated everything as a summarization, this is your time to speak up.

Mr. Douw.

MR. DOUW: If you could wish, I could add a statement on the subpoena on Mrs. Thomas since that relates to the stipulation.

THE COURT: You are right. As I understand it a subpoena has been served on Mrs. Thomas and Mr. Douw says that the material that is sought by the subpoena duces tecum will be delivered and as an officer of the Court I accept his statement and Mr Morris says that he will in the light of counsel's statement before the judge withdraw his subpoena duces tecum and I take it, Mr. Morris, that I have stated your position?

MR. MORRIS: You have, your Honor.

MR. DOUW: Thank you, your Honor.

THE COURT: All right.

Gentlemen, I await you.

MR. MORRIS: Mr. Fried.

THE COURT: Mr. Fried, I know you were sworn, but since there has been such a sizable period, let's have you resworn. There is no harm in it.

ojw 6

WALTER S. FRIED, called as a witness, being first duly sworn, testified as follows:

THE COURT: Mr. Fried, will you bear in mind that while I have the advantage of sitting just a few feet from you and can hear all you say, the acoustics in this otherwise handsome looking courtroom are very poor and counsel must hear every word you say so please raise your voice and remember what I said to you. I take it I said it to you, I have been saying it for 36 years to witnesses, keep your voice up and only answer the question that is put to you.

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. LAND: One other housekeeping chore, your Honor. Government's Exhibit E, which was the nagative impact statement, was marked in evidence by the clerk's notation here, but does not reflect that fact in the transcript. Is there any question that this impact statement was not put in evidence during Mr. Fried's testimony?

MR. MORRIS: There is no question that the statement was put in and we recognize it as being in evidence. However, I would like to make one observation --

THE COURT: By it you mean exactly what marking?

MR. MORRIS: We have the same thing.

THE COURT: Meaning what?

MR. LAND: Government's Exhibit E.

THE COURT: In evidence.

MR. LAND: In evidence.

MR. MORRIS: I wish to make a comment about it, however, and that is that Government's Exhibit E is a combination of the study prepared by the New York City Housing Authority, as testified to by Mr. Fried, and it also contains the study made by the Department of Housing and Urban Renewal and they are both conjoined into the same document and I want it recognized that there are two separate statements both of which are prepared by different agencies and have different significances even though they are marked as the same exhibit.

THE COURT: All right, both are embraced within Exhibit E?

MR. MORRIS: Yes.

MR. LAND: Further clarification. This particular document that Mr. Fried prepared, that was marked E-1. You recall we did quite a bit of testimony

on that one portion of this entire document, that was E-1.

THE COURT: That referred to which part?

MR. LAND: To about the 12-page document prepared by Mr. Fried in his office with the City, which was then forwarded to HUD and then made part of HUD's total package. Is that clear?

THE COURT: I think so. Do I take it that E-1 is actually in evidence?

MR. LANE: E-1 is in evidence separately, but it is a part of E.

MR. MORRIS: That's correct. I have one further statement with respect to the government part of the exhibit, it should be noted that it is a special environmental clearnace study and there is also a finding of inapplicability, those are the precise terms under the HUD regulations for those two documents and I want them understood that those are the items included in the exhibit in the HUD part of the study.

THE COURT: The exhibit speaks for itself and you will address yourselves at the appropriate time to it in great detail, but right now I take it that E-1 is actually a part of E in evidence?

MR. LANE: Yes.

MR. MORRIS: Yes, your Honor.

THE COURT: All right.

FURTHER CROSS EXAMINATION

XX BY MR. LAND:

Q Mr. Fried, I welcome you back to the witness stand after several months. The chances are you may have forgotten some of your earlier testimony. If you are not sure as to your testimony, I have your transcript here so please let me know if there is any doubt in your mind on your prior testimony because it is not my intent to make you say something unintentionally inaccurate from what you said before so I know there has been a long four or five months delay and so if there is any question let me know, please.

The last time you testified, this is reproduced at pages 574 and 575 of the transcript -- do you have copies of the transcript there?

A I have it.

Q On those two pages, the essence is that you had a member of your staff check the total number of low income housing accommodations created by the Housing Authority for the West Side and you gave a recitation of those statistics including that there were a little bit over 2,000 total units created for

ojw 10 Fried-cross

the West Side.

Is that essentially what happened at that part of the testimony?

A Yes.

Q I have obtained -- keep that sheet out because I want you to look at this -- I have obtained from the Housing and Development Administration a statement, you have the same thing.

A I have the same thing.

Q Is the statement which you used to recite the figures you gave in your earlier testimony.

A No.

Q Let me ask you: Is this the same -- let me compare these two. Does this appear to be the same as I have? Have you compared the figures contained in this study with your testimony?

A I am prepared to accept these.

Q As accurate?

A As accurate.

THE COURT: Will you mark it for identification or something what you have been talking about so the record will show that your last few questions relate to a certain paper marked such and such.

Will you check with the clerk on what number

that should be now, Mr. Land.

MR. MORRIS: It should be Exhibit G.

THE COURT: All right.

G for identification.

(Defendants' Exhibit G was marked for identification)

xxxx

MR. LAND: I offer this in evidence.

THE COURT: Any objection?

MR. GOLD: No objection.

THE COURT: Show it to counsel.

MR. MORRIS: May I have a copy of this?

MR. LANE: Sure.

THE COURT: Have you ever seen G for identification before?

MR. MORRIS: No, sir, your Honor, I have not.

THE COURT: I can see from my vantage point that it is more than one page. I am making a direction that in order to save time here after anything that is more than two pages, any exhibit that any of you intend to put in evidence, you will please serve counsel in advance. There are no secrets here. They will get to hear of it sooner or later. Tell them in advance what you propose to put in. Let them see it so they

will be prepared on short notice to state their position.

I am going to receive it subject to a motion to strike. That will protect the plaintiff.

MR. MORRIS: Your Honor, did counsel offer it in evidence?

THE COURT: He did.

MR. LAND: I thought he only offered it for identification?

THE COURT: He offered it in evidence.

MR. MORRIS: I will object to it being offered in evidence.

THE COURT: Are you prepared to address yourself to it?

MR. MORRIS: Well, I wish to have more time to study the exhibit because my first objection is if we are going to stipulate to the figures, as we agreed on the record and in chambers with your Honor, these figures may be totally at variance with the figures that we are going to end up stipulating to and therefore I do not believe that it is appropriate to submit these figures.

I note also that these were prepared as of October 1972 --

THE COURT: Hasn't he got a right to confront

the witness and ask him whether or not he took those figures into consideration with respect to any report that the witness --

MR. MORRIS: But these figures were prepared after that witness testified in his direct testimony.

THE COURT: I see.

MR. MORRIS: In other words, these figures were prepared in October of '73 and this witness' direct testimony was the latter part of September and October of 1973 so that this exhibit didn't even exist at the time this witness testified.

THE COURT: Yes, but even assuming so, hasn't he a right to show him a paper with some figures on it and say to you: Did you rely on these figures when you came to issue your report? Hasn't he a right to do that?

MR. MORRIS: Yes.

THE COURT: All right, that is all he is doing.

MR.MORRIS: I reserve my right to move it be stricken from the records.

THE COURT: I will receive it at this time subject to further motion and argument that will be convincing and cause me to strike it. Right now it is

in evidence.

(Government's Exhibit G was received in evidence)

xxx

THE COURT: You had better recapitulate. I am groping, I don't know what paper you pick up and suddenly I have got to make a ruling so tell me what it is all about.

MR. LAND: Government's Exhibit G, Mr. Fried, do you have a copy?

THE WITNESS: I do.

Q Is entitled "The Status of Redevelopment Cites on the West Side Urban Renewal Area. The source: The Housing and Development Administration, office of Manhattan and Development. Date, October, 1973."

I would like to show the Court a copy as I shall be referring to it.

THE COURT: Thank you.

Q You have had a chance to review the figures contained in that --

THE COURT: In G?

Q In Government's Exhibit G.

A Yes.

Q Are those figures the same as the figures which you gave during your direct testimony?

A Substantially, yes.

Q Mr. Fried, you will note that on the facing page of Government's Exhibit G there is a summary of the total figures of the low income units for the West Side Urban Renewal area and if my mathematics is correct that total comes to 2,730, is that correct?

THE COURT: Take your time.

A I will assume your mathematics is correct.

THE COURT: Don't assume anything. You are the witness. You have to take time.

Will you give him a pencil and paper. This is your testimony. He has a right to ask you whether that is correct.

A Which column are you adding, sir?

Q The middle column on the front page of Government's Exhibit G.

THE COURT: The total of low income units.

Q The three figures there.

A I come to 2,730.

Q Now, the facing sheet indicates that the projects completed have a total low income units of 1,660.

A That's right.

Q Which is approximately the number that you

A To what funding are you referring?

arrived at in your earlier testimony as to completed projects and pages 1 and 2 of Government's Exhibit G breaks down for each project the total number of low income units.

A It does.

Q On completed projects and the next one is called projects under construction indicating the total number of low income units for projects under construction is 137 and page 3 of Government's Exhibit G breaks down the projects under construction.

The final notation is projects in planning indicating the total number of low income units in planning is 933 and the final page, it is not numbered, I guess it would be page 4 of Government's Exhibit G, sets forth the projects in planning as to each particular project, correct?

A Right.

Q In other words, as of right now, Mr. Fried, would it be correct to say that if all the City's plans for the building on the West Side Urban Renewal Area came into fruition, there would be approximately 2,730 units of low income housing?

MR. MORRIS: Objection, your Honor. That is not what the exhibit shows at all. The exhibits does

units. Do you know of any place where the funds will become

not deal with welfare families in what are characterized as middle income categories. IT does not deal with public housing rehabilitations, which are also included in the area and it excludes a number of different categories which could be low income housing that are not in contemplation in this schedule at all and therefore the question does not correctly characterize the exhibit.

THE COURT: What do you say, Mr. Land?

MR. LAND: I think the question itself answers its own question. The question is if the City goes ahead and does what it is planning to do, will the total be what the total is and the answer is obviously yes, unless there is something he wants to add to that.

THE COURT: Mr. Fried, did you understand what has just transpired?

THE WITNESS: Yes, sir.

THE COURT: Speak freely. What do you say with regard to what Mr. Morris objected to? Is he right?

THE WITNESS: I believe so and I so testified to before.

THE COURT: What do you say as to Mr. Land's

question?

THE WITNESS: It is incomplete.

THE COURT: For what reason?

THE WITNESS: It was the City's intention in addition to the low income units created either by new construction or rehabilitation within the West Side's Urban Renewal Area that there would be relocation purposes and to be included in the number of units to be provided three projects known as the Hostos, Douglas addition and 830 Amsterdam Avenue.

If you take the figure that you had, Mr. Land, of 2,730 units and you subtract 430 units, which represents the units intended to be put on cites 4 and 30, you will come to a figure of 2300.

If you will add to that 236 units, which were created by rehabilitation by the Housing Authority, which are not included in Government's Exhibit G and add to that 517 units, which are contained in the Hostos, Douglas addition and 830 Amsterdam, that will bring you to 3,053 units without including a number, the exact figure of which I am not aware, which are units in the middle income 236 projects, the rents for which is paid by the Department of Social Services for low income families.

Q That's good. You mentioned three projects, Hostos, Douglas and Amsterdam.

A 830 Amsterdam.

Q Are those three projects listed in Government's Exhibit G?

A No.

Q Are they within the west side urban renewal area?

A No.

Q Where are they?

A Hostos is immediately adjacent. It's on 93rd Street and Amsterdam Avenue. It's directly across the street. Douglas addition and 830 Amsterdam are slightly north on Amsterdam.

THE COURT: When you say "slightly" --

THE WITNESS: I believe the Douglas addition is on 103rd Street.

Q Six blocks north of the uppermost boundary?

A Yes.

Q The other one was what -- Hostos?

A The Hostos is on 93rd Street and Amsterdam.

Q The other side of the street?

A Yes.

Q Douglas is --

A I believe 103rd and Amsterdam.

Q And the Amsterdam, 830 Amsterdam?

A I don't know.

Q In considering the question of tipping, you would include the low income units of these three projects that are not actually within the west side urban renewal area in making a judgment as to what will happen within the area?

A Yes. I would also include the number of units that are in Douglas House, which starts at 100th Street, three blocks north, and that contains over 2,000 units.

W What you are telling us to consider what is going to happen in a particular area it is necessary to find out what is happening in an area contiguous to the area we are studying?

A Yes.

Q Both the beneficial aspects and the detrimental aspects?

A Certainly.

Q And how far we make our contiguous zone is a matter of expertise?

A I am not even sure the experts know the answer to that.

Q But at least there might be some dispute, some expert might say the contiguous zone to the west side urban

renewal area may go down as far as 65th Street and somebody will say no, it stops in the 70's, but there is an interplay among experts as to what area will affect the west side urban renewal area?

A Yes, sir.

Q And you are aware of the dispute?

A Yes.

Q Could you define your contiguous zone for the west side urban renewal area which would include everything which we would need to know in order to consider what will happen in the west side urban renewal area?

A I would say roughly on the north by about 106th Street, which begins to be known as, I think, Manhattanville.

THE COURT: 106th?

THE WITNESS: Yes, before you get up.

A (Continuing) Going down roughly to the Lincoln Center area.

Q Which is what, 68th Street?

A 65th.

Q And --

A And river to park.

Q You include the Riverside Drive area?

A That is generally referred to roughly as the west side.

THE COURT: The record should show. There may be a judge sitting on this later who comes from Vermont. He doesn't know what you are talking about. Would you define that, please.

THE WITNESS: I believe I did. From 106th on the north to 65th on the south, from Hudson River to Central Park.

Q Including Central Park?

A Yes.

Q In addition to the total of 2,730 low income units indicated on Government's Exhibit G, you mentioned about the Hostos House, Douglas House and 830 Amsterdam Avenue.

In addition to those you mentioned something like 230 units of the Housing Authority?

A 236 units in brownstones which were rehabilitated by the Housing Authority.

Q What is that about? Are they low income?

A Yes.

Q 236 units of low income housing within brownstone?

A Yes.

Q Of which I presume part of the rent paid to the owner of the brownstones comes from either the City or State?

A The Housing Authority owns them.

Q The Housing Authority owns these houses?

A Yes.

Q There was a final figure of about 500 which I didn't --

A That is the sum total of units in the three projects outside of the project area, the Hostos, Douglas addition and 830 Amsterdam Avenue.

Q So what you do under your analysis, you take the 500 which you allocated to Hostos, Douglas and the Amsterdam Avenue projects, plus the 236 units of low income housing within brownstones, and that gives you a total of 736 units, correct?

A 753.

Q The three housing projects outside of the west side area, what was the total number?

A 517.

Q 517. Okay. That brings us to 753. Is that correct?

A Yes.

Q So we add to the number of 2,730 as the total number on Government's Exhibit G, we add to that 753 units?

A Yes.

Q And that gives us a total of about 3,500?

A Well, I came to 3,053 because I deducted the

number of units on the two sites that are in litigation here. If you add them, then you are correct.

Q So if you take out the two sites in litigation, that is Site 4, which has a total of, according to Government's Exhibit G, last page, 270 units, and Site 30, having a total of 160 units, subtract those from the grand total of about 3,500 and you come to about 3,000?

A 3,053.

B2 Q Will the west side urban renewal area tip if it has 3,053 units of low income housing?

MR. MORRIS: I object, your Honor. Those are not the facts which have been developed by this testimony. The number of units are considerably in excess of that number.

THE COURT: Mr. Land?

MR. LAND: I just have been going through the mathematics with Mr. Fried to get some understanding of the numbers, and now we have a number which seems relatively accurate and I asked him a question.

THE COURT: What exactly do you mean by your statement, Mr. Morris?

MR. MORRIS: That is the difficulty of proceeding with this schedule and attempting to tie that into the actual facts when in fact those figures are not known yet

and they are being worked on, as we explained to your Honor a short while ago, and to attempt to take this one schedule and tie down those as being the number of units is inaccurate, it's misleading and does not correctly set forth what the facts are.

THE COURT: We have gone this far and I see no harm in asking a question based on the material that has been under discussion since Mr. Fried resumed the stand, does he think thus-and-so with regard to tipping.

I will take it. It is always subject to being annihilated by further testimony, of course. All of these things will be. But the schedules you were referring to have not yet been concluded. Mr. Fried is now before us. I will take the question for whatever it is worth.

A Because of the additional units --

MR.LAND: Excuse me. Could the court reporter repeat my last question, please?

THE COURT: Certainly.

Mr. Court Reporter, won't you do so?

(Question read.)

THE COURT: All right, Mr. Fried.

A Because this number --

MR. LAND: I would like to have the witness answer yes, no or maybe, and then give an explanation.

THE COURT: No, I will let him answer whatever he feels he should answer under oath. The question may not be capable of it. What difference does it make? I will eventually get his explanation.

Go ahead.

A The answer is yes, because in addition to these 3,000 units there are an additional number of low income families in the middle income projects, the rent for whom is being paid by the Department of Social Service, and because in the immediate surrounding area, to wit, starting three blocks north, directly north, of the west side urban renewal area you have in excess of 2,000 public housing units in Douglas Houses.

THE COURT: Are you through, Mr. Fried?

THE WITNESS: Yes.

THE COURT: Next question.

Q Mr. Fried, I direct your attention to page 598 of your testimony which you gave on October 11, 1973. Do you have that?

A Yes.

Q I would like to read line 7 through line 10, inclusive, where you state:

"It is my opinion that if you get in excess of that figure to any notable extent, that you will then tip

the area so that it will no longer carry out the purposes of the urban renewal project."

Do you recall giving that testimony?

A Yes.

Q In that testimony you refer to a phrase "that figure."

What, precisely, was that figure?

A Approximately 2,500 units.

Q Okay. So we now know that if we recharacterize what you said on October 11, if you get in excess of 2,500 units of low income housing to any notable extent, then it will tip, is that correct?

A It is.

Q And we now also know that approximately 3,000 units of low income housing is a figure which is a notable extent of 2,500 units because on your testimony 3,000 will cause it to tip, is that correct?

A Yes.

Q So that someplace between 2,500 units and 3,000 units there is a balance point at which it will not tip, is that correct?

A Probably.

3Bfol (Continued on next page.)

Q It has to be in excess of 2500 because you said that figure has to be a notable extent of 2500; correct?

A No. You cannot be so precise and exact in talking about the trends within a neighborhood which go on over a long period of years. The present Government G contains figures which are predicated on the Congress of the United States appropriating money to carry them out. I don't think anybody at this point knows whether Congress will do so, and if they do, whoever may be President at the time will veto the bill. If instead of building these middle income units on these sites the deteriorating buildings remain there because of a lack of financing of new construction, then possibly the number of units will be higher than 3000.

If on the other hand, the City of New York advances the money to relocate the people and demolishs the building and there will be empty lots, the number will be smaller.

So this is not an exact science that somebody can point to. On a certain date at a certain hour, so many units will tip a neighborhood.

Q Okay.

Does that also apply to your own judgment of approximately 3000 units?

A Certainly.

Q Mr. Fried, you recognize that Site 30 is scheduled for 160 units of low income housing, is that correct?

A Yes, sir.

Q In other words, let me ask you this:

If we could take 160 units of low income housing to some place else in the City than the West Side Renewal Urban and move them over to Site 30 that would have no consequence for tipping because we still would have the same total number, is that correct?

A That's right.

Q What I would like to do now, Mr. Fried, is to see, based upon projects in planning whether or not we can arrive at a formula which will preserve Site 30 as low income housing and the approximately six million dollars of federal fuding for Site 30 and at the same time not go notably in excess of 2500 unites of low income housing.

I think you would agree that that would be a good thing to do because if we lose the federal funding we have been no benefit at all, do we?

A That's right.

Q So the better policy would be to preserve the federal funding and perhaps shift the low income to some place else?

A To what funding are you referring?

Q The federal funding to build Site 30 as a low income housing project?

A It is insufficient.

Q It would not be a good thing to forfeit that if we can save it by reallocating low income, is that right?

A You can't switch from one program to another.

Q Let's see if we can reallocate without too much difficulty.

A The difficulty is in the law.

Q All the parties are here, Mr. Fried.

A This is a law passed by Congress appropriating money. There is one pot for new construction. That is the money from which these six million something would go for the construction on Site 3 0. Leasing in the other projects comes from a different pot and you cannot transfer construction money to leasing money or backwards.

Q We are not transferring any money, we will be transferring people. People are a rather homogenous group.

A You cannot transfer low income families into units without money and that money must come from a certain pot established by Congress.

Q Let me ask you this, Mr. Fried:

On Site 4 we have a project in planning for 270

A He was.

units. Do you know of any place where the funds will become available to construct that site?

A No, sir.

Q I see here on Government's Exhibit G, the last page, another project in planning called the Rapaport and Cohen project in which there is no estimated completion date.

Do you know what the status of that project is?

A No, sir.

Q Is it being built?

A I don't believe it is.

Q I see another one down there, St. Dimitru's Church with no recognizable estimated completion date. Does that mean nothing is being done on it?

A I don't believe there is.

Q And the other projects there which are listed for completion dates, spring '75, spring '75, fall '76, fall '76, fall '75, doyou know whether or not all of those projects are currently funded and under current expectations will be built according to plan?

A What do you mean when you say "according to plan"?

Q If they have the money and nothing in the world is going to stop them from going up other than Sites 4 and 30.

A If you include the rental of low income units

as contained in this schedule, that is not funded. If you mean the construction of the building as such without considering its occupancy, that's up to the City of New York. That's all City money or State money.

Q Oh. Look, let's do a little mathematics here.

Do you have page 4 in front of you, Mr. Fried? What we are going to try to do is reach the figure of about 2500 units of low income housing and we will start with saying, based on the summary on the front page of Government's Exhibit G, that we have 1660 units already completed plus we have 137 under construction, giving us a total of 1797.

To that figure we will add your figure of 753 which represents the 236 units of low income housing in brownstone and 517 units of low income housing in Hostos, Douglas, and the Amsterdam Avenue projects.

So we add those figures together, 1797 plus 753, and that gives us a total of 2550 units; is that correct? Do you follow my mathematics?

A I follow it but are you hypothesizing or are you considering this as actual?

Q What I am doing is I have arrived at a number of 2550 units of low income housing projects that are built and in the process of being built. Essentially

what I have done is I have excluded this entire page.

A Can you not make that assumption?

Q That is what I have just done, haven't I, Mr. Fried?

A It is incorrect.

Q Let's do it once again. I start off with 1660 units --

A Right.

Q -- of completed low income projects. To that figure I add 137 units.

A That's wrong. I am trying to explain, sir, the fact that the City of New York says they are constructing it or leasing to the Housing Authority does not make it a fact. If, when those buildings are finished, money is appropriated and assigned to the New York City Housing Authority, then we can comply with the City's plan to have those 137 units rented to low income families. If the money doesn't exist it can't be done.

Q Maybe we shouldn't add the 137 in right away, we should put a questionmark next to it?

A Yes.

Q Let's leave it out, then. Let's start with 1660 units completed. To that we add -- I want to make sure we are right on these figures -- to that we add 236 units, rehabs and brownstones, low income units. Plus then we

add 517. That is the number for the three projects contiguous to the West Side Urban Renewal area. That total comes out to 2413, is that correct?

A Yes.

Q Okay. I turn then to the chart showing the project in planning in which they plan 933 units. We are going to go back to the last page here. These are planned projects. We are going to see which ones of those are in such a state of total flux and uncertainty that the Court might, if it accepts your testimony that some figure in excess of 2500 will tip the area, the Court may say, "We are going to save the federal funding for Site 30 but we are going to issue an injunction against planned sites for which there is no funding."

That would be satisfactory, wouldn't it, so long as we don't go to the notable extent of 2500 units, correct? Do you follow me?

A That would be my opinion. That may not be the decision of the State of New York.

Q They are a defendant in this case. They may not have a choice.

A It that a question?

Q You say the City is going to make a decision. Not if the Judge decides otherwise. If the Judge decides

2500 units is the figure we cannot exceed or we cannot exceed a figure to the notable extent of 2500, he is going to take the axe to some project.

What I am suggesting to you, Mr. Fried, is by looking at the last page of this schedule we know that, for example, Site 30 for 160 units has federal monies available.

A Insufficient.

Q Do you know of any other project listed here that has more money than six million dollars allocated to Site 30 by the Federal Government?

A That's not Federal money.

Q Which of these projects has any funds committed at all on the last page?

A I wouldn't have any idea. You would have to ask HDA, because that's either State of City money, not Federal money.

Q We will get that from HDA, but then you would agree -- let me scratch that.

You would agree, would you not, Mr. Fried, one way to achieve the objective in this Court of not exceeding 2500 units of low income housing by a notable excess would be to eliminate projects other than Site 30, in other words, if we have 160 units allocated to Site 30, we will say, "Let

this site go ahead, we will knock off 160 units some place else for which there is no funding, "And the result would be the same, correct, in other words, the same number?

A You know, we are talking in a vacuum. We are talking figures for which there is no funding. It may very well be, with due respect to Judge Cooper, that what the City can accomplish will depend on the source of funds and whether they are appropriated. I can't say it would be better to eliminate them from projects which might be funded by the City or State because there wouldn't be Federal money or whether it would be better, if Congress appropriates money, to use the Federal money rather than local money in the manner in which it is provided by Congress.

Q Mr. Fried, I refer you to the page of projects under construction of Government's Exhibit G. These are Mitchell-Lama projects listed there, are they not?

A Yes.

Q The notation under the column headed financing program says, "City ML 236."

That means Mitchell-Lama was financed by --

A It is an interest rate subsidy, bringing the interest rate down to one per cent.

Q Fine. So we see there that one of the projects scheduled for completion in the winter of '74 presumably

it is not yet completed, is that right? That is project 28?

A That's right.

Q Is that project being built right now?

A It is being built.

Q I see there we have allocated 56 units of low income housing?

A That's right.

Q It wouldn't make any difference if those 56 units whether eliminated from that particular site and instead put some place else?

A There is no money for them either on that site or some place else. Congress has the bill before it right now and I don't know what's going to come out of Congress.

BY MR. LAND:

Q Mr. Fried, I would like to refer you now to page number 2 of Government's Exhibit G and take, for example, Site 27 there. It was to have been completed in October of '73. Has it in fact been completed?

A Yes.

Q Are residents now living in it?

A Yes.

Q Including the 14 low income people in the low income unit?

A Yes, sir.

THE COURT: You might for completion, Item 27 referring to townhouses, right?

MR. LAND: Yes, your Honor.

THE COURT: All right.

Q I refer you to page 1 --

THE COURT: Of G?

Q Of Government's Exhibit G.

May I strike that, please.

Mr. Fried, was one of the objects of the West Side Urban Renewal Project when it demolished unsuitable living quarters of which low income people had resided, was one of the objects to relocate those people back within the West Side Urban Renewal area?

A Yes.

Q Do you know approximately how many low income families were relocated out of the West Side Urban Renewal area?

A I do not have that figure now.

Q Do you know whether or not all the people, all the families who were relocated from the area have returned home yet?

A I don't think they have.

Q Do you know approximately how many people, how many low income families, and I assume by a low income unit I mean one-family how many more units of low income houses will be needed to satisfy the needs of the relocatees, do you know?

A For one thing, your assumption is wrong. You said a whole family. Strikers Bay now takes the position that any member of that family who gets married during that period of the development of the West Side Urban Renewal is entitled to an apartment. I have no idea if that is restricted to just one child or five children, how many additional apartments that would require.

During the period of developing the project a number of squatters moved in. I don't know what that number is.

During the period of the development of the project the Department of Welfare paid rent for a lot of people who moved in after the City took title in the project area. I don't know what number that is.

Q I understand. My conception is you have a building in which there is no plumbing, the lights don't work and the floors are falling in and it is decided it has to be demolished. There are 15 families living in it. You tell those families we are going to demolish those buildings,we are going to build something in its place and you can come back again. Do you follow me?

A Yes.

Q When the building is put up, they will hopefully have 15 units and the people will come back again?

A It is the City of New York's position up until now it has been that the people within an urban renewal project area are entitled to relocation preferably within the area from which they came.

Q Do you ascribe to that policy personally?

A No, sir.

Q What is your view?

A They are entitled to be relocated in decent, safe and sanitary housing accommodations within a rental they can afford and if they cannot afford it to be subsidized by society through one law or another not necessarily

that they be returned to the very area that is being redeveloped because under those circumstances you cannot change the character of neighborhoods and improve them if you have the same concentration of low socio-economic people.

MR. LAND: I think that will conclude my questions, Mr. Fried, and thank you.

THE COURT: All right. Gentlemen, you know your order. Who wishes to cross examine the witness?

Mr. Gold?

MR. GOLD: Yes, your Honor.

CROSS EXAMINATION

BY MR. GOLD:

Q Mr. Fried, when the planning project was before the Board of Estimate of the City, did you appear on behalf of the Housing Authority in support of that planning project?

A You are referring to the planning project for low rent housing?

Q The planning project for low income housing on Site 30?

A Yes, I did.

Q So that in December or November of 1971 when the matter was before the Board, you supported the concept of building 160 units of low income housing on the Site 30;

is that correct?

A On behalf of the Housing Authority I appeared before the Board of Estimate and made the statement that we had a plan and project available; that if in the infinite wisdom of the Board Site 30 should be used for public housing the Housing Authority was prepared to try and build it.

Q That is confusing. On the one hand you say and you have testified that you supported the planning project which means to me that you supported at that time the building of 160 units of low income housing on that particular site.

A On behalf of the Housing Authority. That does not mean it was my personal opinion.

Q Were you a member of the Housing Authority at that time?

A Yes.

Q Were you its vice-chairman at that time?

A Yes.

Q Did you say as its vice-chairman you were in a position to make policy on behalf of the Housing Authority?

A In conjunction with two other members.

Q Let's go a little bit into how the decision was arrived by the Housing Authority to go ahead with the 160 units on Site 30.

Can you tell us a little bit about that?

A Yes, the Mayor of the City of New York asked the Housing Authority to do it and we are responsive to the wishes of the Mayor of the City of New York and the Board of Estimate and we conceive of ourselves as an agent, not as an independent authority, and we try to accommodate the City. The City through the Mayor asked us to do it. The Board of Estimate voted to do it and we did it.

Q When the Mayor asked you, did you meet after that with your chairman and the other member?

A Yes.

Q How do these decisions take place, Mr. Fried? Do you get input frc the staff?

A Yes.

Q When you met was there any discussion between yourself and your chairman and your other co-member as to the pros and cons of placing this public housing on that particular site?

A Not to any great extent.

Q So you were really, you say, going along with what the Mayor wanted, that is Mayor Lindsay, is that correct?

A The Mayor and the other two members of the Housing Authority.

Q How did you feel about it yourself at that time, Mr. Fried?

A I don't think I was particularly exercised realistically, the chairman of the Housing Authority serves at the will of the Mayor. The other member at that time had a very short period remaining of his term.

Q Who was that, by the way?

A Mr. Gomez. And I suppose he was hopeful that he would be reappointed.

Under those circumstances, two members of the Housing Authority usually did whatever the City wanted.

Q What I asked you, sir, was how did you feel personally when you met with the other two members of the Authority at that point and discussed the possibility of this plan and project?

A I thought it was an unwise decision.

Q Did you express yourself to the other members of the Authority?

A I did.

Q But then you, yourself, even though you thought it was unwise, went to the Board of Estimate and presented that plan and project to the Board for its consideration?

A Yes, the Housing Authority had to be represented and I was the one available at the time.

Q How come Mr. -- was Mr. Golar the chairman at that time?

A He was.

Q Is there any reason why Mr. Golar, who I assume was in favor of this project, did not go himself?

A He was otherwise engaged and trusted in my ability to convince the Board of Estimate.

Q So even though you personally disagreed, you went to the Board in support of the project and told the Board that the Housing Authority is ready, willing and able to move along with this project assuming they approve the site, is that correct?

A That is correct.

Q Mr. Fried, during the time that you were the Deputy Commissioner for Housing Production at HDA, what period of time was that, can you remember?

A Well, from the beginning of HDA, which I think was sometime in '66, until 1970.

Q What, exactly, is housing production in terms of what you were doing?

A We supervised the City Mitchell-Lama Program.

Q When you say you supervised the City Mitchell-Lama Program, that was throughout the five boroughs, is that correct?

A Yes.

Q What did those duties entail exactly for you?

A I was the chief administrator of a unit which accepted applications for City mortgage money under the Mitchell-Lama Law. We made recommendations to the administrator, either approving or disapproving.

We accepted applications from organizations or individuals whom HDA designated as a sponsor in Urban Renewal areas.

We processed those applications. We caused architectural drawings and working drawings and specifications to be prepared in accordance with regulations.

We then applied to the City Planning Commission for approval of a plan and project. If approved subsequently to the Board of Estimate for approval of the project and authorization to make a loan.

Q So you were, in essence, then, the Mitchell-Lama person at HDA during that period of time?

A Yes.

Q Would you that is correct?

A Yes.

Q Now, in conjunction with that work, you really didn't touch on Urban Renewal much, did you?

A Most of the sites we processed were within Urban Renewal areas.

Q Yes, but your interest was not with the Urban Renewal

really, was it; it was with the housing starts under the Mitchell-Lama Program?

A That was my prime responsibility, yes.

Q You weren't concerned with public housing at all during that period of time, is that correct?

A You mean officially in developing public housing?

Q Yes.

A No.

Q In your official capacity?

A No, I was not.

Q And the West Side Urban Renewal area was but one area in a whole big city full of other areas and other places where you were busy trying to get Mitchell-Lama housing developed and built, is that correct?

A That is correct.

Q I refer you, Mr. Fried, to Plaintiffs' Exhibit 21, which is a memo from yourself to Robert Hazen, dated December 3, 1963. Do you have that?

MR. GOLD: Do we have another one of those?

Q Now, sir, this particular memo relates to the six cites for Mitchell-Lama Projects in the West Side Urban Renewal area, correct?

A Right.

Q And can you reiterate what the purpose of this memo

was?

A At that particular time, if I recall correctly, the City was changing its policy to increase the number of low income units within the Mitchell-Lama's that were being planned or under construction from 20 per cent to 30 per cent and I was instructed to meet with the sponsors to get them to agree to the 30 per cent.

This is a report of the results of my meeting.

Q Your recommendation was against proceeding to change what was ongoing at that point, is that correct?

A That is correct.

Q What was the reason for that recommendation, sir?

A It was my feeling that increasing the number of low income families within individual structures would over a period of time make it more difficult to sell co-operative apartments within that building and that there would be a strong possibility of an ultimate financial failure of a project which was being financed by the City of New York.

Q But you didn't say that in here, did you, sir?

A Those were my reasons and those were discussed within the agency.

Q This memo in fact has nothing to do with 2500 numbers, public housing units. Wasn't it really a memo

that said, please don'e change now. We are moving along with these six projects and they will be 1968 housing starts. Remember, this was December of '68. Weren't you anxious to get these thing, under way for 1968?

A There was the additional reason that I have just testified to.

Q But that doesn't appear anywhere in your memo to Mr. Hazen?

A It was discussed with Mr. Hazen.

Q Outside of this memorandum?

A That's right.

Q But in addition to what you discussed, you were anxious to get the six projects moving so that there would be those housing starts in '68, weren't you?

A Right.

Q That was one of your motivations?

A Yes, sir.

MR. GOLD: Thank you.

Q Mr. Fried, we have talked a lot here about a number, specifically a number of 2500 units, and you have testified on and off and exhibits have been introduced indicating that that number as a commitment has been reaffirmed by the City on numerous occasions, is that correct?

A Yes.

Q What exactly, sir, do you think the reason was or is for the City constantly reaffirming this commitment, so-called commitment of 2500 units?

A That it was felt when it was originally made that this would adequately provide for relocation of the people within the area that had to be relocated.

Q But why did the City, each commissioner as administrations changed, why did the City keep coming out and saying, we reaffirm that commitment, we are going to build 2500 units. Were they having problems building those units?

A The public doesn't often believe public officials and very often it is necessary to reaffirm a commitment. There is a credibility gap.

Q Who was the commitment being reaffirmed to?

A The Board of Estimate.

Q The Board of Estimate, I see.

Now, in the use of a 2500 commitment for low income units within the Urban Renewal area, would it be fair to say that the words "at least" should appear before 2500?

A Yes.

Q That was what they were really saying. We will

build at least 2500 low income units, correct?

A Correct.

Q Now, when you went to the Board of Estimate in December of 1971 in connection with the Site 30 public housing plan and project, do you know how many low income units had been constructed in the West Side area at that point?

A No, sir.

Q Did you know at that time?

A No, sir.

Q Did you also appear, by the way, at the City Planning Commission hearing on the plan and project?

A I don't believe I did.

Q Did anyone from the Authority appear?

A Probably.

Q But you don't know of your own knowledge?

A No.

Q By the way, in your discussions with the Authority and your personal feeling that this might not be such a good idea for Site 30 back then, did you consider the tipping question at all?

A No, sir.

Q When you were before the Board of Estimate was there any discussion of tipping by yourself or any of the

members of the Board in connection with this proposal?

A No, sir.

THE COURT: May I interrupt to ask you, Mr. Fried, to use the vernacular, how come? Explain that to me. I must understand, I must be edified so I can weigh this material and I must understand it. Why?

THE WITNESS: The policy I have always operated under is that when an issue is up for discussion I will take my position and make it clear. Once a decision has been made, then as a soldier in the Army I carry out that decision. I do not believe in civil disobedience.

THE COURT: Thank you.

Q So the vice-chairman of the Housing Authority is really acting in a ministerial capacity, is that correct?

A Oh, yes.

Q That is how you consider yourself, Mr. Fried?

A That is what the rules and regulations of the Housing Authority say.

Q I don't understand that.

Could you explain that, sir?

A Yes, there are rules and regulations that were drawn up a long time ago by the New York City Housing Authority which prescribe the authority and duties of the individual members. The chairman is the chief administrative

officer.

The general manager serves in his place.

The other two members participate in the making of policy, in the voting at Board meetings, the approval of contracts above certain amounts and matters of that kind.

We do not participate in the day to day administration of the Authority.

Q But you participate -- you as one of those members you described participate in policy?

A Yes, sir.

Q So you are more than ministerial, aren't you?

A Once the policy has been discussed and a vote is taken at the Board meeting of the New York City Housing Authority, the carrying out of that by anyone other than the chairman is purely ministerial.

Q That I understand, Mr. Fried, but prior to the vote being taken, someone in the Authority certainly on a high level makes policy. It just doesn't happen from elsewhere, isn't that correct?

A The three members participate in making policy.

Q So you are a policy-maker?

A Yes.

Q But once that policy is then made, whether you agree

or you don't agree, what you are saying is you then effectuate that by carrying it out administratively?

A Yes, sir.

Q Fine, that is no different than any other agency of the City of New York, is that correct?

A That's right.

THE COURT: Let me interrupt you, unless you are going to pursue it yourself. Mr. Gold has brought out through you, Mr. Fried, that the Board, the Housing Authority was not a rubber stamp.

Am I to take it that if the City fathers decreed that a certain project with regard to low income should be the policy of the administration that you would content yourself automatically with that appraisal or that estimate even though you might be violently opposed to it?

THE WITNESS: We will participate in the discussion of the advisability of doing this and we will use in the event we feel it a bad move everything within our power to persuade the City not to proceed with it, but we have to be realistic. A great portion of our deficit in the tens of millions of dollars is made good by the City of New York and it is the same here as it is in other places, the power of money dictates and we couldn't very well keep telling a Mayor and a Board of Estimate

no, we won't do it and then come back the following week and say, please, we need another 26 million dollars because the cost of oil went up.

So within the realm of trying to convince somebody that what is proposed we deem is a bad idea, we really can't go realistically beyond that.

Q By the way, did you ever have any discussion with the Mayor's people and the Housing and Development Administration people with respect to your position on this matter?

A Yes, it was discussed within the Policy Board.

Q Were you there at that time?

A No, we were represented, though.

Q Excuse me?

A We were represented there. We don't go to all of the Policy Board meetings.

Q When you say "we," you say the Housing Authority was represented?

A That is right.

Q Was that after the decision had been made by a vote of the chairman and the two members?

A Before.

Q You weren't there personally?

A I, frankly, don't recall. I go to some; I don't go to all. Sometimes all three of us go, sometimes just staff. It depends on what the agenda may be, if we got the agenda in advance.

Q The Housing Policy Board sounds like the type of organization or group which makes policy or decides on policy; is that correct?

A It arrives at decisions by consensus which are then recommended to the Mayor, who may or may not accept them.

Q So that the purpose of you being present as a major housing agency of the City of New York is to give them some input on how you feel about the particular project, is that not correct?

A Correct.

Q So that at the meetings you attended then, I assume, you told them you didn't think it was a good idea?

A If, in fact, I did attend. I don't recall.

Q If someone else attended on your behalf or on behalf of the Authority, what kind of a position did they take, do you know?

A No, I don't.

Q Mr. Fried, when the Housing Authority voted on this project, to go ahead with this project, was that a formal vote taken at a regular meeting?

A Yes, sir.

Q How did you vote at that time?

A Affirmatively.

Q You voted in favor of the project?

A Yes, sir.

Q How did Mr. Golar vote, if you know?

A It was unanimous.

Q When did that take place, by the way, sir?

A I would have to check the records.

Q But it was prior then, of course, to the Board of Estimate's hearing?

A Yes.

Q But even though you were against the project at that time personally, you voted in favor of it; is that correct?

A Yes.

Q Would two votes out of three have carried the project as a matter of policy?

A It would.

Q Mr. Golar, obviously, was in favor of the project; is that correct?

A That is correct.

Q And Mr. Gomez was in favor of the project?

A That is correct.

Q So they didn't need your vote?

A That is right.

Q But you voted for it anyhow even though you were against it personally?

A Yes, sir.

Q And then you, yourself, the only member of the

Authority who was personally against this project, went before the governing body of the City to support that project and present a plan and project on behalf of your agency?

A Yes.

Q You could have sent the general manager, isn't that correct?

A In view of the fact that I had been appearing before the Board of Estimate for the prior 12 years on many occasions, knew many of them personally, it was requested that I appear not only for this but on other occasions.

Q Mr. Fried, did you feel strongly about being against this project?

A Would you define "strongly"?

THE COURT: In the common acceptance of that word.

MR. GOLD: Yes.

THE WITNESS: No.

THE COURT: Next question.

Q With respect to Site 4, Mr. Fried, you testified back in '73 that you were not at the Authority when that approval went through; is that correct?

A I believe that is so.

Q When you came to the Authority in August of '70--

A Yes.

Q -- did you make yourself familiar with the ongoing projects then in progress.

A Over a period of time, yes.

Q Did you become familiar at one point with the proposed project for Site 4?

A Yes.

Q Could you tell us what was proposed for Site 4?

A It was proposed to have the education construction fund develop and construct a public school and housing above it.

Q That is the New York City Educational Construction Fund?

A Yes.

Q Is that what is commonly known as a combined occupancy project?

A Yes.

Q In coming across and reviewing the various projects to the Authority, particularly Site 4's project on the west side, did you come to any conclusion with respect to that project, whether you were in favor of it or against it?

A No, sir.

Q You did not. Did you have any discussions with

Housing Authority staff on the propriety of going ahead with 270 units of low income housing?

A No, sir.

Q So you really had nothing to do with Site 4 one way or the other?

A That's right.

Q Do you feel the Authority should go ahead with Site 4 at this point?

A It's a moot question. There is no money for it.

Q Let's assume, sir, that there was money for it. Let's assume that there was a complete turn-around in Washington and the funds came flowing through and the City is the recipient of a great deal of these funds and we are ready to move ahead. Do you feel we should move ahead with Site 4 now?

A No, sir.

Q But you had no opinion on Site 4-- well, strike it. I will rephrase that.

Did you form any opinion on Site 4 at any time during the year 1971?

A No, sir.

Q During the year 1972?

A No, sir.

Q During the year 1973?

A Yes.

Q Was that opinion formed in connection with this particular litigation?

A It was the first time I was asked an opinion.

Q Now, sir, in connection with the site office that the HDA maintains in the west side urban renewal area, wasn't that really an information type of office?

A It had two functions. One was information and the other was assisting the public particularly with respect to rehabilitation brownstones.

B2 Q Why particularly with respect to rehabilitation brownstones, Mr. Fried?

A It was a feidl that was not very well known at that time. This was the beginning in the City of New York of a movement to rehabilitate brownstones.

Q Lots of forms to fill out?

A Yes.

Q And federal agencies to be involved?

A Yes, and also specialized knowledge with respect to what had to be done and what should be done, physically, that is.

Q So, it was there for information generally and particularly, as a second function, specific information to prospective brownstone purchasers and rehabilitates?

A That is the way it started out.

Q These people who were there, I think in your testimony you mentioned several names, a Mr. Hunter or Col. Hunter, Mr. Loria, Leroy Williams and Mr. Vandervelt, did you ever meet those people?

A All of them.

Q Did you know them well?

A At one time a couple of them were employees of mine.

Q At the site office?

A No. The site office originally was a part of the Housing Redevelopment Board and any part of the Housing Development Administration. All four of them were employed by me at the time I was a member of the Housing Redevelopment Board or a Deputy Commissioner of the Housing Development Administration.

Q At the time they were on a staff level when you were at HDA and earlier possibly when you were with HRB, what level was that these people were on in your understanding?

A Middle management.

Q To your knowledge did they have any authority to enter into contracts on behalf of the City of New York?

A No.

Q Could you, for example, as a member of HRB, veto or alter something that one of those people might have said at the site office or decided at the site office, is that possible?

A Yes.

Q Did they really represent the HRB or the HDA, whichever it happened to be, in any function or in any capacity other than information?

A I think there were, I would like to use the word ministerial actions that they could take.

Q Ministerial actions?

A Yes.

Q But they didn't have any discretionary authority, did they?

A No.

Q So that if one really wanted to find out what was happening and get to the people who could bind the City by their actions, they had to come downtown to the main office, isn't that correct?

A Yes.

Q I think Mr. Land went into this slightly, but I want to direct myself to the same general area of your testimony with respect to numbers of units and I believe at page 578 of the transcript you testified to the very

numbers that Mr. Land discussed with you of units over which the Housing Authority had jurisdiction either through leased public housing or through the fact that they were public housing projects themselves. At one point you make reference to an affidavit that was executed by David McGregor when he was Commissioner of Development and since that affidavit is now, pursuant to the direction of the Court, part of the exhibits in evidence before the Court in this matter, I would just like a little clarification from you, sir.

I point to page 578 and particularly starting with line 23. I will read that for you just to bring it to the Court's attention.

Paragraph 46: "Currently about 1,646 low income dwelling units have been constructed in the area and another 1,032 are in planning, including 160 on Site 30." And it says 207, it should be "270 on Site 4. Of course, units in the planning state cannot be determined with any precision and the figures are always subject to change to meet current needs and new progress."

Mr. Fried, when Mr. McGregor stated that in his affidavit, he was talking about units in the area, was he not; did he make that clear?

A I think he was.

Q So that the number 1,646 that he speaks to does not include 830 Amsterdam, de Hostos House, or Douglas addition?

A That is right.

Q Would you say that the second sentence, which appears on the top of page 579, in connection with units in planning was a correct statement?

A Oh, yes.

Q So that at any time projects can be scrapped, isn't that correct?

A Correct.

Q Numbers of units can be changed?

A Yes.

Q Up and down?

A Yes.

Q Now, moving further down page 579 to line 10 where you testified:

"Page 15 of the same affidavit, Mr. McGregor says the following: Thus, of the total of about 14,500 units to be contained in the entire west side urban renewal area, about 3,000 or slightly more than 20 percent are to be low income."

He used the word "about" very clearly, did he not?

A Yes.

Q That was an approximate number, is that not your understanding?

A Yes.

MR. GOLD: Thank you.

Q Mr. Land went through with you Government's Exhibit G. By the way, Mr. Fried, does the Housing Authority have any funds of its own with which to construct housing?

A No.

Q It is entirely, then, dependent on other agencies for fuding purposes; is that correct?

A Yes.

Q To your knowledge, sir, are there any federal funds available today for any type of low income public housing construction in the City of New York aside from the reservation for Site 30?

A And other reservations which we have. The reason I hesitated in answering that is that there have been appropriations made by Congress, which the President has seen fit to impound. I don't know, is this money available for public housing or isn't it?

We have not been offered any and if we asked we can't get it. I think that will clarify it.

Q So you have got some money under reservation prior to this so-called impounding, is that correct?

A Yes, sir.

B3

Q That is allocated to specific projects?

A Yes, sir.

Q Other than that, you don't have any money?

A That is correct.

Q So, the Housing Authority is sort of at a standstill in terms of new projects, isn't that correct?

A Correct.

Q So all of the projects, then, on page 4, for example, in this Government Exhibit G, which are the planning projects or in planning projects, insofar as they may utilize some of those units for leased public housing really are conjectural at this point, isn't that correct?

A No.

Q Why not, sir?

A Because the money that is made available for leasing is made available pursuant to a law which provides for that out of Part A.

The money for new construction, which is appropriated under a different law or different section of the law, comes out of a different pot and except for the Secretary of HUD the money cannot be transferred from one to another.

THE COURT: So that the money is earmarked?

THE WITNESS: Yes, sir.

THE COURT: For each project?

THE WITNESS: Yes, sir.

THE COURT: What you are saying is that even though it is definite, the actual use of the money is abortive, it is not in operation?

THE WITNESS: Correct, sir.

THE COURT: Is that right, it's locked up?

THE WITNESS: Yes, sir.

THE COURT: You can't use it because of what you call the President's impounding of those funds?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Mr. Fried, I wasn't talking about switching from what is commonly known as Section 23 leasing moneys over to new construction moneys, back and forth. What I am trying to say or what I am trying to get from you, sir, is let us take Site 4, the top site, the combined occupancy education and construction site. Do you have any dollars, any money at all for construction of that new construction today?

A No, sir.

Q On the other sites involved on page 4 of Government Exhibit G every one of those sites except Site 4

and Site 30 involves some number of units for which the Housing Authority will take over under its leased housing program, leased public housing program?

A Should there be such a program in existence and funded at the time we are offered the apartments.

Q Is it in existence today and funding?

A No, sir.

Q So, again I say, you don't know from day to day, from year to year, what you are going to be able to fund and what program you are going to be able to function under, isn't that correct?

A That is correct.

Q So these low income units that are mentioned as total units in planning, excluding Site 30, the 160 units, are really at this point kind of speculative, aren't they?

A Yes.

Q And may never come to fruition?

A That is correct.

Q Now, sir, on the same page except for the two straight public housing projects on Sites 4 and 30, the other projects are called City Mitchell-Lama/FHA 236. Could you explain what that means, Mr. Fried?

A The fundamental mortgage would be made by the City of New York after authorization by the Board of

Estimate of the City of New York at a Mitchell-Lama rate of interest, which, if I am correct, is one-quarter of a percent above what it costs the City to borrow the money.

Under Section 236, which is a federal law, HUD will subsidize that project so as to bring the interest rate down from whatever the City charges to one percent.

Q To your knowledge, sir, is there any FHA 236 funding available today to the City of New York?

A I have no personal knowledge.

Q In the absence of FHA 236 funding, could the City still build these Mitchell-Lama projects?

A Some of them.

Q What do you mean by some of them, Mr. Fried?

A I believe the figures would come in at around 90 or $100 per room per month. Those projects, which are better located, may very well be able to obtain that rental if the federal government, as is provided for in bills before Congress now, provides Section 23 money, which means the Housing Authority could lease them, and if, as it has been rumored, the price which the Housing Authority will be authorized to pay will run about the same thing as a Mitchell-Lama rental.

Q As a straight Mitchell-Lama rental?

A Yes.

Q Without any 236 subsidy?

A Yes.

Q What you are saying then, sir, is that in certain parts of the west side urben renewal area, so-called straight Mitchell-Lama, non-subsidy Mitchell-Lama buildings are feasible; is that correct?

A If Congress appropriates money so that we, the Housing Authority, can rent them for low income families.

Q Why are they only feasible for you? Why are they not feasible for the people for whom they are intended, the middle income strata of resident?

A Some of them might, I don't know. My question is what kind of rentals can you get on the west side today? Nobody is investing any private money building above 79th Street.

Q Nobody is investing any private money in any --

A Apartment houses that I know of.

Q That you know of?

A Yes, sir.

Q And nobody is investing any money any more in the west side urban renewal area to your knowledge?

A That is correct.

Q What do you mean, Mr. Fried, by the way, by $100 per room when you say $90 to $100 per room, what does

that mean?

A I don't understand your question.

Q Before when we were talking about developing the Mitchell-Lama projects mentioned on the last page of Government's Exhibit G, you said if they were developed without 236 subsidy they would probably come in at $90 to $100 a room; is that correct?

A That is correct.

Q What does that mean, rental?

A Rental.

Q So that if it was a four-room apartment, it might be up at $400?

A That is right.

Q Did you suggest, sir, that there is a program which the Housing Authority would take over those units?

A I've been advised by certain people in Washington that in all probability this will come about in the New York City area. In other words, HUD is supposed to set up a median figure of what is being produced by private enterprise within different cities and then they will authorize, assuming Congress passes the law, they will authorize the Housing Authority to rent apartments at that figure and then have the tenant pay to the Housing Authority the lower rent as provided for by the Housing Authority schedules.

Q And the difference would be paid by whom?

A By HUD.

Q And so then you -- I think what you are saying, sir, is you might build a complete Mitchell-Lama project with a City mortgage and the Housing Authority might take over the entire project, is that what you are saying, sir?

A No, no, because at the present time it is HUD's policy not to allow more than 40 percent in a building. One of the drafts of the legislation before Congress is to give priority if only 20 percent of the units will be leased to low rent families. I don't know how it will come out.

Q By the way, does the Housing Authority have any policy on the number of units in a Mitchell-Lama project that should be devoted to leased public housing or to low income people?

A I think it would depend on the location of the project and other factors. I don't think -- I think we would decide it on a per case basis.

Q [illegible] have any overall policy?

A That is right.

Q You say HUD's policy is up to 40 percent of the units in a building for low income persons; is that correct?

A That is correct, where they are financing or contributing.

Q Excuse me?

A Where the federal government is financing or contributing.

(Continued on next page.)

Q And in the west side that would be pretty much evidence, is that correct?

A No, I don't think they all have 236 money.

Q At this point, the planned project?

A Those in planning.

Q And those have 236 money?

A Yes.

Q And those that essentially have leasing money, that is all federal money?

A The leasing money is, yes, but there are many Mitchell-Lamas which are financed solely by the City of New York without federal subsidy, in which the Housing Authority leases apartments.

Q And that is what you call straight Mitchell-Lama, correct?

A Yes.

Q Are you familiar with the fact, Mr. Fried, that the State Division of Housing has committed itself to take over two sites in the west side?

A I read about it and have heard.

Q Do you know which sites those are?

A No.

Q Do you know whether they are involved in any 236 subsidy program or not?

A I am told they do have 236 money.

Q You have testified that one of the important features of the stability in an area is the type of buildings that are built in terms of the residents staying on for a longer period of time, is that correct?

A Yes.

Q And I think you said that the cooperative type of building is the type which might further that stability?

A Yes.

Q To your knowledge, a number of Mitchell-Lamas that were co-ops were to be changed to rental projects?

A Yes.

Q Were any co-ops built on the west side in 1971?

A Other than within the project area?

Q No, within the project area.

A Offhand, I don't know the exact dates when construction started or was finished of these projects.

Q Were they all rental projects, do you know?

A I think most of them were, if not all.

Q Do you know what the motivation was or is for a developer to build a rental project in lieu of a cooperative project in this area or in any City subsidized area?

A I think twofold. Number on , fear of ability to sell apartments. The Housing Authority, which sometimes

bails out these people by leasing apartments, may lease but not buy in copperatives.

And secondly, tremendous tax benefits that are derived from the tax shelter that is provided by a rental unit.

Q Tremendous tax benefits, is that not correct?

A Yes.

Q Are you familiar with Section 16 of the Private Housing Finance Law, Mr. Fried?

A Probably. I don't recall which it is offhand.

Q If I were to tell you that Section 16 of that law permits housing companies, Mitchell-Lama housing companies, to be members of limited or general partnerships for the purpose of developing these projects, would that refresh your recollection?

A Yes, sir.

Q And those tax benefits, as you say, are tremendous , are they not?

A Yes.

Q They are quite a motivation for a developer to move in the rental area rather than a co-op?

A They were.

Q They were?

A Yes.

Q Until when?

A Until Congress started talking about doing away with it.

Q But --

A All during this period, they were.

Q Are you familiar with the City's general policy in connection with building or developing cooperative-type apartments as against rentals?

A At one time, yes.

Q When was that?

A During the HRB days.

Q Prior to 1967?

A Yes, sir.

Q What was the policy then?

A Try and develop as many cooperatives as possible.

Q You don't know the policy since the HRB days, you say?

A No.

Q But it was a policy to develop co-ops?

A Yes.

Q And all of a sudden that changed?

A Yes, sir.

Q And all you see coming through, and if you look

at page 4 of the projects in planning on Government Exhibit G, every single one is a rental?

A Yes, sir.

Q You say that is twofold, because it is not so easy to market the co-ops in the west side, and secondly, because of the tremendous tax benefits?

A Yes, sir.

Q Would you say the tremendous tax benefits are of real priority to the developer in going rental rather than co-op?

A I can't say what the priority is as to each developer, but I know, because I went through it, the seriousness of trying to sell co-ops. When HRB took over the Mitchell-Lama program from the Comptroller of the City of New York, the City would not advance mortgage money until 90 percent of the apartments were sold, because it was a 90 percent mortgage.

It soon developed that if you continued to follow that policy you would never start an apartment house because you couldn't sell 90 percent. So that during the days of the Housing and Redevelopment Board, we progressively reduced that figure until we hit 40 percent and it was recommended to us by our statisticians that if 40 percent of the apartments were sold and you started to build, in all

probability you could sell the rest, until a few of them ran into trouble and at that point both the City of New York deemed it dubious about advancing money before apartments were sold and the law was changed which made for a tax benefit, and that's when the change came about.

And we realized that if you wanted to have any middle income program at all, then you had to go rental, although we would have preferred co-ops.

B2 Q There is no question, though, in your mind that these tremendous tax benefits that you referred to certainly play a part in de eloping the project as a rental project as opposed to a co-op?

A Of course.

Q I refer you to page 2 of Government's Exhibit G, which lists some of the projects which have already been completed and specifically to Sites 31 and 36, Site 31 being St. Martin's Tower.

That's a co-op, is it not?

A I believe it is.

Q Does it show the completion date of St. Martin's?

A March, 1971.

Q And Site 36, Turin House, that's a co-op also, is it not, Mr. Fried?

A Yes, sir.

Q And the completion date or that?

A December 1971.

Q So there were some coops, correct?

A Yes.

Q As late as December 1971?

A That's right.

Q As opposed to your statement in your testimony that no co-ops are being developed for the reasons that you gave?

A Those things were planned about two years before completion date, maybe three years before.

Q Mr. Fried, plans change, do they not?

A They do.

Q A developer comes back to the Housing Development Administration and says, "I don't want to go co-op any more, I want to go rental"?

A Turin was developed by Stryker's Bay on a 100 percent mortgage. They didn't have to put anything up in advance, and the tax benefit wouldn't have done them any good.

Q The reason for not going rental --

A They could afford to carry out what is a good policy.

THE COURT: I notice 31 and 36 on page 2 are a

total of only 36 low income units on that page, in other words, 36 low income units out of a total recorded there of quite a substantial figure which are non-cooperative?

All right.

Q Mr. Fried, in line with what his Honor has just said, do you know or are you aware of any reason why the number of low income units in the two cooperative projects are lower than those in the rental projects?

A They are not leased by the Housing Authority. I would have no knowledge. In all probability, just as happened with Stryker's Bay -- I am sorry. They are co-ops. We couldn't have taken them in any event.

THE COURT: So you wish to have your last comment stricken, is that it?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q By the way, in your travels through the housing area and your familiarity with housing, is the City involved in financing Mitchell-Lama cooperative buildings anywhere else in the City of New York?

A I wouldn't know.

Q With reference to brownstone construction -- I should say brownstone purchase and brownstone rehabilitation in the west side or in the urban renewal area, you indicated

in your earlier testimony that one of the most promising parts about the development of the area was that private people were buying up those brownstones and rehabilitating them, a lot of prominent people lived in them, and you were advised, particularly on page 585, line 21, "I have been advised on inquiry at HDA that the City hadn't sold brownstones in over a year."

This would have been on October 11, 1973.

Who advised you of that?

A A man by the name of Daniel Bayer.

Q Is he an employee at HDA?

A Yes.

Q What do you attribute to that, the fact that the City hadn't sold a brownstone in the year prior to October, 1973?

A I would say it's probably as a result of several things.

Q Could you enumerate those things?

A Lack of willingness to invest in real estate and, secondly, difficulty within the mortgage market.

Q With respedt to the lack of willingness to invest, could you expand on that a little bit? Why would people be reluctant to invest on the west side?

A If they found out that people who had

rehabilitated could not sell for the price that it ultimately cost them to buy and to rehabilitate.

Q That would be true about any place, is that true?

A Sure. That is what determines an investment in real estate.

Q It is not peculiar to the west side.

When you talk about the mortgage money problem, what kind of a problem is that?

A Difficulty of obtaining it and the high rate of interest.

Q This is federally financed mortgage money?

A It could be, or it could be private.

Q I see. In both cases there would be some difficulty or there would have been difficulty, let us say, the year prior to October, 1973, in obtaining those funds?

A There were periods of tightness in the mortgage market and of looseness.

Q On two occasions in your prior testimony you indicated you, in your capacity as Housing Authority, ran short of an apartment finding service.

Is that a reasonable way to characterize it?

A Well, if you will.

Q And you testified that occasionally people con-

tacted you, elected officials, who were looking for apartments for their constituents, low income units.

A It's usually a request for information as to what happened to an application filed by a constituent.

Q So they weren't looking for you, for example, to try to find something out of the ordinary course of business, were they?

A No.

B3 Q And what did you do when you got those requests or inquiries?

A I have a secretary who handles them. She inquires of the Management Department what the facts are and then she drafts a letter for my signature, advising the elected official, or whoever it was that inquired, as to what the status is.

Q You didn't handle it personally?

A No.

Q You made a statement on page 593 of the transcript, the last line of the page, line 25:

"In those instances where I offered assistance in procuring low rent housing accommodations within the west side urban renewal area it was turned down."

Are you saying, sir, that when somebody came to you and had a low income constituent for whom you had an

apartment in the west side area, that that low income person said, "No, I don't want to live there"?

A There have been such occasions, yes.

(Continued on page 760.)

Q Were those frequent occasions?

A Not a whole volume. We were not renting thousands upon thousands of apartments in my office.

Q Did they have any other preference, these people, would they prefer to live in Brownsville?

A Usually the preference is in the Bellevue South project area, which is in the vicinity of Bellevue Hospital, or the Sheepshead Bay section in Brooklyn or certain areas in the northeast Bronx.

Q I see.

And if a person was low income and you got an opportunity for them on the West Side of Manhattan, you are saying in some cases they were unhappy about that?

A Yes.

Q But not too many occasions?

A No.

Q At page 605 of the transcript, Mr. Fried, starting with line 20, you made reference to Plaintiffs' Exhibit 5. Bear with me a moment. I will try to locate that.

In Plaintiffs' Exhibit 5 on page 15 you read some pieces of material and I will hand it up to you so you can --

A Is this page 605?

There is no number on it.

Q Yes. This is the material.

You read a portion of that material which related to the specific goals of the Urban Renewal Plan and you stated, number one, that one of the goals was:

"The elimination of substandard housing with particular emphasis on the elimination of overcrowding and unsuitable uses."

Do you think this has occurred in this West Side Urban Renewal area?

A To some extent.

Q Has substandard housing been eliminated?

A All of it, no.

Q Is it necessary to reach the goal of Urban Renewal to eliminate all the substandard housing in the area?

A All that which is planned and contained within the plan.

Q And some of that hasn't been eliminated for the reason there is no financing for the projects, isn't that correct?

A That is correct.

Q So it hasn't been necessarily the fault of the City's housing agencies or the City itself that some of this building and development and elimination of substandard housing hasn't come along, is that correct?

A I didn't mean to imply that it did.

Q Okay.

Number 2 goal:

"Provision for new residential development of various types and rental ranges to serve a broad cross section of the community, with appurtenant retail development."

Do you think that has occurred, Mr. Fried?

A To some extent.

Q To what extent?

A It's obvious the plan has not been completed, and to the extent that it hasn't been completed, then this hasn't been done. To the extent that it has been completed, I think it's been fairly successful.

Q Right. So to the extent it has been completed today there has been provision for numerous residential development and various rental ranges?

A Yes.

Q And that serves a broad cross section of the community, correct?

A Yes, sir.

Q The third goal:

"Preservation and improvement of community facilities including the provision of additional open space both active and passive recreation."

Has that been accomplished to date?

A To some extent, yes.

Q In other words, to the extent that it has been developed, these goals have been met, is that correct?

A Yes.

Q The fourth goal:

"Encouragement of permanent residence in the area through improvements of amenities and accommodations for family living there."

Has that been met?

A It has been encouraged.

Q That's all it says, they would encourage it, that was the goal, correct?

Now, the fifth goal was the:

"Completion of a harmonious balance of high and low structures and of open spaces."

Have we got a balance of high and low structures --

A Yes.

Q -- in your estimation?

A Yes.

Q And six, we talked about improving the tax base in the area by encouraging private investment as broad as possible in base.

Has that been met?

A No, sir.

Q Has the tax base been improved in the West Side Urban Renewal area as a result of the development there?

A I believe it's been decreased.

Q Decreased. Do you have any figures on that?

A All you have to do is add up the amount of tax abatement that has been given.

Q Are you saying, then, that in the Mitchell-Lama Projects which have tax exemption under appropriate statute of the State and with the approval of the Board of Estimate and pay what is commonly referred to as shelter rent -- are you familiar with that concept, by the way?

A Yes.

Q Are you saying that shelter rent payment in liew of actual real estate taxes is less than the taxes that were being paid for that site prior to the Mitchell-Lama development?

A It will depend on the site. What was intended here was private money to develop sites without tax abatement and increase the tax base because up until the West Side Urban Renewal Project, while Urban Renewal then known as slum clearance was being carried out by the Slum Clearance Committee under the direction of Mr. Robert Moses, it was the policy of the City as a result of private development in Urban Renewal land so that the total

tax return after development would be greater than that which was there before it. So that if you got tax abatement, the taxes you had to pa would be at least what was on the project before, but as you did, either in Lincoln Center or the Coliseum area, where you had tax abated, alongside of it there was private development which produced a tax revenue so the total revenue to the City of New York would be greater than it was before development.

The West Side Urban Renewal Project was the first one where that policy was changed.

Q Was the policy changed, Mr. Fried, or was there a good reason why private investment could not go ahead in the West Side during the years of the development?

A At the time that this thing was prepared -- I am referring now to Plaintiffs' Exhibit 5 --

Q That is correct.

A At the time that was prepared it was intended that several of the locations which appeared to be marketable would be developed conventionally without any tax abatement at all. As the result of a long period of time, increased costs, it was then determined by the policymakers of the City of New York to abandon any attempt to get private enterprise to build without Government subsidy.

Q Are you privy to that decision to abandon the

the conventionally financed housing?

A Yes. That's when the amendments to the plan were made which eliminated the corners of 96th Street and Columbus from fully taxpaying to middle income.

Q Isn't it correct to say that the reason that that policy changed and the reason these particular sites could not be developed as fully taxpaying sites was because the financing was difficult or impossible to get, the cost of construction was, if not high, phenomenal, and that units were coming in much more than expected and could not be market on the West Side?

A I just said they couldn't be marketed.

Q But to the extent that they could, the City of New York worked toward improving that tax base in reaching one of these seven or eight goals, isn't that correct?

A I don't think it has.

Q You don't think the City has?

A The tax base. I don't think that any development that took place or is taking place on the West Side is in contemplation of increasing the tax base.

Q Today?

A Today.

Q But in 1958 it was contemplated?

A It was contemplated.

Q That is 15 years ago?

A Right.

Q And things change, availability of funds in construction costs change not only in 15 years but change every month, do they not?

A They do.

Q The seventh goal you referred to was:

"Reduction of traffic congestion and parking problems."

And I believe that later on you said that almost all these goals had been met, when the Judge questioned you about it, except the parking and traffic congestion. Do you still feel that way?

A Yes.

Q Is it true that every project that is built, particularly the high rise projects, have mandated off-street parking facilities?

A Yes.

Q Is that true about the Housing Authorities' projects?

A Yes, to a lesser extent.

Q But to some extent?

A Yes.

Q In other words, you have to provide a certain number of parking spaces in some direct connection with the

number of units you produce, is that correct?

A That is correct.

Q To the extent that there were no off-street parking places before this development and there now are off-street parking places, would you say that there has been some effort to reach reduction of traffic congestion?

A I cannot agree with your assumptions. You said there were no off-street parking facilities beforehand.

Q To your knowledge, were there as many off-street parking facilities prior to the West Side development as there are now?

A I haven't added them up, but I venture an opinion that the garages that were torn down for the West Side Urban Renewal area provided at least as many parking spaces as you have in the new apartment houses.

Q So you feel that one of the goals which was reduction of traffic congestion and parking problems has really not been reached to date?

A Yes.

Q Not at all?

A Not at all.

Q And the eighth one was:

"Development of active community participation

throughout the renewal process."

You have no question that that has been there, have you?

A No.

Q So generally, would you say, sir, that to date, except for the traffic problem again and the tax base problem, pretty much the goals that you recited from that preliminary plan way back in '58, to the extent that the area has been developed, have been reached?

A I would.

Q And there is no reason to believe that if the area continues to be developed that those goals will not continue to be evident in the development to take place in the future, is that correct?

A It depends on how they will be developed.

Q But there is no reason to believe that they are going to be developed in any other way except as is here planned?

A When you say "here planned," what are you referring to?

Q On page 4 of Government's Exhibit G.

A I can't accept that. I don't know what funding there will be in years to come. I have seen so many changes beforehand.

THE COURT: Gentlemen, we will have to continue with this promptly at 2:15.

I take it that you are going to call Mr. Fried back after the schedules that are now before you for study and for agreement and which are to replace G in evidence, I take it that you intend to call Mr. Fried back and confront him with those new schedules, because I would like to get his testimony with regard to the new schedules in order to realign what we have been spending two or three hours on as to his thinking and his reasoning in respect of G in evidence.

I think that naturally follows and I presume you all welcome that, you were going to do it anyway.

But I would like Mr. Fried to know that you are in for a sizable length of testimony, in other words, after today you will have to come back after these schedules have been submitted to you for examination so that you can testify with regard to them.

You understand that.

THE WITNESS: May I ask your Honor whether it would be possible on Wednesday morning for me to come in, if I am required, no earlier than 11:00.

THE COURT: Don't be concerned about that. We will accommodate you. I see no problem on that score.

Gentlemen, thank you. And we will resume promptly at 2:15.

Announce a recess until that time.

THE CLERK: The Court will recess until 2:15. All rise, please.

(Luncheon recess.)

Take la pm

EOjw 1

AFTERNOON SESSION

2:15 P.M.

(Trial resumed)

THE COURT: Please continue, Mr. Gold.

WALTER FRIED, resumed.

CROSS EXAMINATION CONTINUED

BY MR. GOLD:

Q Mr. Fried, at page 554 of the transcript, starting at line 8, you testified previously that your interest in the period around 1970 was not only what was happening within the 20 square blocks of the West Side Urban Renewal area, but what was happening in the peripheral area running down as far as 59th Street and up as far as 125th Street because the Housing Authority had a lot of units of public housing within that entire peripheral and your feeling was that what happened within one section of a large area affects the other, is that correct?

A Yes, sir.

Q Now, at this time in 1970 when you held that

particular belief, you also said that your observations at that time indicated that the West Side project itself had reached a kind of peak in momentum and that it was possible with just a little bit more to turn it around and the area would begin to deteriorate, is that correct?

A That's correct.

Q Can you give us a more specific time when that particular observation was made other than just 1970 area?

A No, sir.

Q Was it made prior to your appearing before the Board of Estimate at the hearing for the Site 30?

A I don't know.

Q Did you consider that observation, that is, the observation that one more action perhaps by the City might turn the area around because it had reached this sort of peak, did you consider that in supporting at the Board of Estimate the change for Site 30 from Mitchell-Lama housing to public housing?

A I don't think what happens on any one particular site is going to change the fate of the West Side or of the world. It is what happens in conjunction with everything else that is happening and it happens

over a period of time. It doesn't happen on a particular day.

Q But you did state that you thought it was dangerously close possibly to turning around and going the other way, correct?

A Yes.

Q But your support of Site 30 at the Board of Estimate at that time in 1971 would seem to indicate that that was not the action that was going to turn the West Side the wrong way, is that a fair statement?

A Not necessarily so.

Q Would you say based on your observations at the time in 1970 and '71 and when you appeared before the Board of Estimate in connection with the Site 30 hearing, would you say that the housing change from Mitchell-Lama on that site to public housing was consistent with sound housing policy?

A No, sir.

Q You would not. Of course, you supported it at the Board of Estimate.

A Yes, sir.

Q You also have testified to the fact that many things go into turning an area one way or another and in that connection you said that in the area

immediately surrounding the West Side there have been many conversions to single room occupancy recently.

Is that a correct statement?

A Yes, sir.

Q Then you further went on at page 611 and said, there is extensive occupancy in hotels by people being released from Rikers Island and from mental institutions.

Do you know of your own knowledge how many people occupy hotels in the area immediately adjacent to the West Side Urban Renewal area?

A No, sir.

Q Do you know if any of those people come out of Rikers Island?

A Yes, sir.

Q You do, of your own personal knowledge?

A There was a study made by the Housing and Redevelopment Board of several buildings on 85th Street between West End Avenue and Riverside Drive.

Q When was that study made?

A I don't remember the exact date.

Q Do you have it with you?

A No, it was published by the City of New York.

Q That was a study published by the City of New York that had some numbers or some statistics as to the former inmates of Rikers Island and in mental institutions living in hotels in the West Side.

A No, with respect to the block.

Q Which block?

A 85th Street between West End and Riverside Drive.

Q That is it, just one block?

A That was it, that study.

Q Okay, one block. Then you further went on at page 611 and said that you can see them visibly on the malls from Central on Broadway along Central Park West on the benches all of which have an effect within the Urban Renewal area.

Am I correct in understanding you mean you can see them, meaning the people who have been released from Rikers Island and mental institutions?

A I cannot say that I have personal knowledge of any of them by name having been released, but I do know there have been newspaper stories with respect to a concentration and I have personally observed people on the malls.

Q You have personally observed people on the

malls. Mr. Fried, tell me: How do you recognize a person who has been a former inmate of Rikers Island who may be sitting on a bench on the mall on Broadway?

A I am referring to those that are lying down on the ground for whom ambulances have to be sent.

Q Even if they are lying on the ground, Mr. Fried, do you have any special way of telling that they are former inmates of Rikers Island?

A Obviously not.

Q Or of mental institutions.

A Obviously not.

Q So when you said here back in October that you can see them visibly, what precisely did you mean, sir?

A Derelicts.

Q Derelicts, I see. What is your definition of derelict?

A I would say somebody without a visible means of support in a state of inebriation or under the influences of narcotic, notin control of themselves.

Q By seeing these people on Broadway or Central Park West, you yourself were able to make an evaluation that they have no visible means of support?

A I think it would be obvious from their appearance.

Q Those people are contributing to the so-called demise of the West Side Urban Renewal or they are a factor?

A They are a factor in the reputation of the West Side.

Q They are derelicts, so to speak, and people who become inebriated in other parts of the city?

A Sure.

Q It is a fairly common thing, is it not?

A Frequent.

Q You would say if you observed those people anywhere else in the city that they, too, might be contributing to the downfall of the area near them, is that correct?

A Yes, sir.

Q But it is nothing that is particularly significant or isolated to the West Side, this state of inebriation, this dereliction, is that correct?

A That's correct.

Q Mr. Fried, when you appeared at the Board of Estimate's hearing back in December of '71 you were present at the time that Roger Starr testified before the Board, were you not?

A I don't know whether I was in the chamber

at the time.

Q You don't remember whether you heard any remarks that Roger Starr made?

A I don't think so.

Q You don't think so. Well, do you have any recollection of hearing Mr. Starr make remarks in connection with the tenant selection criteria of the Housing Authority?

A Not on that occasion, but I have heard it on others.

Q What was the nature of Mr. Starr's remarks?

A He was critical.

Q He was critical?

A Yes, sir.

Q Do you agree with his remarks?

A We are doing only what the law permits us to do.

Q What is it that the law permits you to do?

A Visually observe a person, ask him about a criminal record, no ability to verify it or check it out. We can ask about narcotics addiction without any ability to check it out and we can determine as best we can his income.

Q Are those questions, are they asked on an

initial application for an apartment?

A In an interview.

Q Is that a personal interview?

A Yes.

Q Does somebody fill out a form when they come for that interview?

A The form is submitted beforehand by the applicant.

Q And then there is some staff people who review those, is that correct?

A That's right.

Q Do you have procedures for turning down an applicant to public housing over which you have jurisdiction?

A Yes.

Q On what grounds?

A They may be over income. That is probably the only grounds on which we turn them down because that is about all we can find out.

What Mr. Starr was doing was referring back to the days when the Housing Authority had the ability to receive a criminal record from the Police Department, when you could get a record of attendance and possibly truancy from the Board of Education, when you could get

certain information from the Department of Social Services. None of that can be done any longer.

Q Yes, but you do have some guidelines. You just do not take people without -- what is the purpose of the application, sir, if you don't have any guidelines for selecting the tenants?

A The guidelines are anyone with a recent history of violent crime or narcotics addiction, but we can't establish it, so that in reality very few people at all are turned down.

Q Now, supposing people are living in your project--

THE COURT: May I interrupt? In other words, these vital factors would enter into the criteria for an examination of that kind are without meaning inasmuch as there is no wherewithal available to go behind the answer of the prospective tenant?

THE WITNESS: That is correct, sir.

THE COURT: You are pretty much bound by whatever the tenant or the applicant has to say?

THE WITNESS: Yes, sir.

THE COURT: On that alone you judge whether or not it sounds truthful or not, but checking it out is beyond your capabilities by reason of financial limitations?

THE WITNESS: By reason of law, sir.

THE COURT: By reason of law?

THE WITNESS: Yes.

THE COURT: That is so, isn't it? You cannot inquire, you cannot make an independent study, that is prohibited?

THE WITNESS: That is right.

THE COURT: Very well.

Q That prohibition that his Honor is speaking of, Mr. Fried, does that arise out of one major decision and others, but particularly the Escalara case?

A It is a part of it.

Q So you are saying that, yes, we have certain guidelines, but no, we don't, because we can't do anything about them anyway?

A That is right.

Q So pretty much anyone, as long as they meet your income limitations, is admissible into public housing units?

A By and large that is true.

Q What about the ongoing tenants, Mr. Fried. Supposing one of your tenants commits a crime right on the premises, right on the premises, and he is convicted of that crime. Are you in a position to evict that tenant?

A Sometimes yes; sometimes no.

Q Which is the sometimes yes?

A Sometimes yes is if we can establish, after an

administrative hearing in our office at which witnesses, pursuant to the Escalara decision, witnesses are interrogated, cross-examined and an impartial hearing officer makes a determination that the continued presence of that family within the project constitutes a threat to the health, safety or welfare of the remaining tenants, we then have a referral by the hearing officer to the full board.

The board then votes. Assuming that the recommendation is for termination of tenancy and the board votes to sustain that recommendation, we then have to bring a civil proceeding at which time witnesses are presented, cross-examined and a civil court judge makes a determination as to whether the continued presence of this family constitutes a threat to the remaining tenants.

Very often before that can be done an Article 78 proceeding is brought on behalf of the tenant, usually by one of the poverty law agencies, Mobilization for Youth or other, and presents proof to the Supreme Court that the offending member of the family, A, has been put in jail for a long period of time and, therefore, he is no longer present in the project or, B, he has moved out and there have been several decisions that as long as he has moved out, until somebody else in the family does something, their tenancy cannot be terminated.

Q If they have moved out or they are in prison for an extended period of time, the problem you were trying to solve in terms of finding whether they were detrimental to the welfare of the project is really solved?

A Not necessarily.

Q Why not necessarily?

A Because in very many instances they move across the street, they are constantly visiting within the project and until they commit another crime within the project, you can't do anything.

Q But you do have procedures?

A Yes.

Q You have a staff that engages in these procedures?

A Yes, sir.

Q And attorneys who conduct these procedures?

A Yes, sir.

Q And you, as a board member, have sat, I assume, on many of the referrals from your staff level?

A Yes, sir.

Q And have you ever decided as a board member that a particular tenant met the criteria for eviction and you proceeded in that direction?

A Yes, sir.

Q So it is not a complate void and within the framework of Escalara's guidelines and the various other decisions, you do have procedures?

A Yes, sir.

Q You try to implement them, right?

A Yes, sir.

Q You do your best to implement them?

A We do.

Q Are you in favor permanently of implementing these procedures in the best way possible?

A Certainly.

Q Do you feel that through these procedures and perhaps others that are developed that you can maintain more viable public housing projects?

A No, sir.

Q You do not?

A No, sir.

Q Do you think the procedures should be stronger?

A It is not up to us; it is up to the courts.

Q That is not responsive, Mr. Fried. Do you personally think that the procedures should be built up and strengthened?

A May I answer it this way: I would be prepared to respond to the demands of our city-wide tenant

organizations that we have stronger procedures.

Q So, you are not too happy about the court decisions necessarily?

A I am not, sir.

MR. GOLD: I have nothing further. Thank you.

THE COURT: Mr. Douw.

CROSS-EXAMINATION

BY MR. DOUW:

Q Mr. Fried, I would like to return again to discuss the three projects that are outside the urban renewal area, which you testified to, but which were included in the 2,500 units that the urban renewal area is required to have.

These are the de Hostos apartments, Douglas addition and 830 Amsterdam Avenue; is that correct?

A Yes, sir.

Q Is the Hostos apartments immediately adjacent to the area?

A Yes, sir.

Q And Douglas addition, I believe you testified that that is about 103rd Street.

A Yes, sir.

Q So it is not adjacent to the area?

A That is right.

Q About six blocks away. 830 Amsterdam Avenue?

A I don't know what street that is.

Q Do you know whether it is adjacent to the area?

A It is not. If it is important, I think I can get the street.

Q If you would, please.

A It is 101st Street and Amsterdam Avenue, 100th to 101st.

Q That would be about three blocks from the northern border of the area; is that right?

A That is right.

Q Mr. Fried, I show you a copy of Defendant's Exhibit F, which is a resolution adopted by the Board of Estimate, dated December 9, 1966. This resolution was the direction by the Board of Estimate that the City provide at least 2,559 units in connection with the area and it also has a schedule of the conventional public housing projects that are to be included in this figure and I would ask you if that includes the Douglas addition?

A No, it does not.

THE COURT: Referring to F in evidence. It does not. Next question.

Q Does this resolution, Mr. Fried, state city policy as directed by the Board of Estimate?

A I don't know what it does. I don't know who prepared it.

Q Was it a resolution passed by the Board of Estimate?

A Yes, sir.

Q If you know, was there a later resolution that dealt with this particular subject matter?

A I don't know. I would be inclined to think somebody left it out because they had the other two in there.

(Continued on page 789.)

T2Afol

THE COURT: By the other two you mean --

THE WITNESS: De Hostos and 830 Amsterdam.

Q You don't have the units the division has?

A 135.

Q I believe you testified that these three projects were included in the plans for the area as a relocation resource for those displaced from the area. Is that correct?

A That's correct.

Q And I believe you also testified that in evaluating the possibilities of tipping of the area or the area beyond the urban renewal area, that you would include the Douglas Houses to the north of the area, is that correct?

A That's correct.

Q And I believe you made it clear the Douglas Houses have those 2,000 units?

A That's right.

Q And that is not the same as the Douglas addition?

A That's right.

Q Where are the Douglas Houses located?

A 100th to 104th Street, Central Park West to Amsterdam.

Q So am I correct to include that when you are talking about the possibility of tipping you take in different projects and different area and different consideration than when you are considering the number of units that are in planning for the urban renewal area as far as the question of relocation, is that a correct conclusion from your testimony?

A Yes.

Q So that in evaluating tipping you are expanding your perimeter at least northwards to include the Douglas Housing, is that correct?

A Yes.

Q What lies between the northern border of the urban renewal area on 97th Street and the southern border of the Douglas Houses?

A I think it's called the West Park -- it was the old Manhattantown urban rehewal area. I think it's West Park Apartments.

Q West Park Apartments?

A I believe so. West Park or Park West.

Q How would you characterize that particular project between 97th and 100th?

A A good one.

Q By "good one," would you elaborate on that?

A I think the New York Times last year had an article about it which recited it was one of the best in the country in achieving a redevelopment of a deteriorated area into an area that services various classes of people with good residential accommodations.

THE COURT: I will let that stand, but you were asked for your opinion.

THE WITNESS: I would agree.

THE COURT: You adopt that?

THE WITNESS: Yes, sir.

THE COURT: That answer of yours applies now, to have the record clear, to what particular development?

THE WITNESS: I believe it was the West Park or Park West development, which runs from 97th Street to 100th Street and from Amsterdam to Central Park West.

Q Do you know how many units are in that unit?

A No.

Q Would 2,000 sound reasonable?

A Probably.

THE COURT: Mr. Douw, I don't automatically absorb the information unless it's brought to my attention. That particular development, what is that? Under whose auspices? Howwas it created? Is it within the area of what we are talking about? I don't quite get it. What is this

west side, the area the witness said met with his approval overwhelmingly and he adopted the New York Times estimate on it? What area is that?

MR. DOUW: The area I am referring to is running from 97th to 100th Street, that is, three blocks north of the west side urban renewal area. It is another urban renewal area.

Q Is that correct, Mr. Fried?

A It was.

Q It was. The project, Park West Village --

THE COURT: When was it completed? Approximately.

THE WITNESS: In the latter 60's.

THE COURT: Now I understand.

Q Can you describe the kind of development Park West Village is? By that I mean is it a conventional or a Mitchell-Lama development or what?

A It's conventional with the mortgage insured under Section 220 of the Federal Housing Administration Law.

Q And are the rents in Park West Village market rents?

A I believe so, yes. It's fully tax-paying, I might add.

Q Fully tax-paying?

A Yes.

Q Do you know whether there are any leased public housing units in that project?

A There are not.

Q Are you familiar with the project known as West View Apartments?

A Possibly, if you identify it for me.

Q I am referring to a project on the corner of Amsterdam Avenue at 97th Street, I believe the northeast corner.

A Isn't that part of Park West Village?

Q It is in that same area. I believe it's a different project.

Are you familiar with it? It's called West View Apartments.

A The northeast corner of 97th and Amsterdam would be part of the Park West. It runs from 97th to 100th, from Amsterdam to Central Park West. I believe there is a school next to it.

Q In evaluating the possibility of tipping, Mr. Fried, in the west side area generally, would you take into consideration the area south of the west side urban renewal area, that is, south of 87th Street?

A Yes, sir.

Q Are you familiar with the developments south of 87th Street?

A Yes.

Q How would you characterize those developments?

A There are several conventional apartment houses under construction right now.

Q Several under construction?

A Yes, sir.

Q Do you know where they are located?

A One at 79th and Amsterdam, one at 70th and Broadway and one directly opposite Lincoln Center. I think it's 66th.

Q When you say conventional developments, do you mean by that that they are not subsidized?

A That's right.

B2 Q And if they are not subsidized, can you tell the Court what the rents in those developments are likely to be when completed?

A Probably between 125 and 150 after the concessions run out. My guess is they will be giving several months' concession.

Q When you say 125 to 150 --

A A room.

Q Per room per month?

A Yes.

Q So a two-bedroom apartment, let us say, may run approximately how much? Can you tell us?

A $600.

Q Would you describe those as luxury rents?

A No, sir.

Q They are not luxury rents?

A They are not luxury apartments. They are the best that conventional construction can provide. It is the cheapest that can be provided by conventional construction. If you want luxury, you run up to $200, $250 a room.

Q Would you say that only people in a reasonably high income bracket could afford apartments at $150 a room?

A Absolutely.

Q Do you know whether the Housing Authority would consider those buildings luxury buildings?

A They are not and we wouldn't. This is the cheapest that private enterprise can produce. My concept of luxury is something better and more expensive than the cheapest. There is one going up on 57th or 56th Street off Park Avenue which is coming in at a thousand dollars a room. That's luxury.

2Bfol (Continued on page 796.)

Q Those buildings that you speak of in the 70s on the West Side, are they built by private developers?

A Yes, sir.

Q Do you think a private developerwould go into that kind of construction in that location if it had reason to believe that the area was tipping?

A If he was able to mortgage out and he had a tax benefit, he might.

Q Could you describe that? What do you mean by mortgage out?

A Getting mortgage money to cover the entire cost of development, so you do not have any of your own cash invested, a very frequent procedure in private enterprice.

Q And by tax benefits, what did you have in mind there?

A Depreciation.

Q With those benefits, Mr. Fried, would it still be the case that rents would come in in those particular buildings at $150 a room or would it be something less than that?

A It would be that.

Q It would be that. So is it a possibility, if you can guess, that these developers do have these

benefits that you speak of?

A In the vernacular, I think they are shooting crap. Whether they are going to win or lose the next five to ten years will tell.

Q Do you know how many units, approximately, there would be in the three developments you are speaking of?

A No, sir. There probably would be somewhere in the vicinity of three, four hundred.

Q How many?

A Three, four hundred.

Q For all three?

A Yes.

Q In your testimony in October you mentioned among the indices or trends in the area that gave you concern as to tipping the fact that there are now no longer regular restaurants.

A There are less.

Q There are no longer regular restaurants in the area, was that your testimony?

A I think I intended to say there were less.

THE COURT: You also, as I remember, commented on the poor quality of the restaurants. You said that they were crowd attracting, that it resulted in rubbish

being strewn around, that they were fly-by-night, took care of customers, transients.

THE WITNESS: In the area surrounding the Urban Renewal area, primarily on Boardway.

THE COURT: My memory is correct?

THE WITNESS: Yes.

Q You referred in particular to McDonald's, did you not?

A That was one of them. I think I also mentioned a large number of pizza places.

THE COURT: That's right, you did.

THE WITNESS: Open stands.

Q Along Broadway?

A Yes.

Q McDonald's is on 96th and Broadway?

A Between 95th and 96th.

Q Is 96th and Broadway a major corner in that area of the city?

A Yes, sir.

Q The people who eat in those places would you say come from a number of places and not just the Urban Renewal area?

A I do not know.

Q You don't know. Do you know whether there

are similar kinds of places located within the West Side Urban Renewal area?

A Within the area?

Q Yes.

A I don't think so, unless they are in the area that has not yet been re-developed.

Q But you don't know?

A No, sir.

Q Are you familiar with a restaurant called Rabelais?

A I undersatnd it;s a gourmet restaurant.

Q Do you know where it's located?

A No, sir.

Q Do you know whether it's within the Urban Renewal area?

A I think it is.

Q You think it is. Do you know of a restaurant called Under The Stairs?

A I have passed.

Q Where is it located?

A Within the Urban Renewal area.

Q Are you familiar with the restaurant?

A No, sir.

Q Do you know what the prices are?

A No, sir.

Q Are you familiar with a restaurant called Hanratti's?

A I have been it advertised in the West Side newspapers.

Q Do you know where it is located?

A No, sir.

Q Do you know whether these restaurants I mentioned are new, comparatively?

A I believe they are.

Q Are you familiar with a restaurant called Mikell's?

A No.

Q Are you familiar with a restaurant called Russ Brown?

A I don't know it was a restaurant. I know it's on 96th Street between Amsterdam and Columbus.

Q Would that be within the Urban Renewal area?

A It would.

Q Are you familiar with the kind of restaurant it is?

A No, sir.

Q You have never been in it?

A No.

Q Do you know of a restaurant called The Cellar?

A I passed that.

Q Do you know where it is located?

A Within the Urban Renewal area.

Q Do you know what kind of restaurant it is?

A No, sir.

Q Mr. Fried, I believe you also testified in October that there were a number of stores or more of them from your personal observation which sold shoddy merchandise or cheaper merchandise, is that correct?

A I would say shoddy. I think in the trade they either talk of trading down or trading up. You carry better at higher prices when you trade up, and when you trade down you carry poorer quality at lower prices.

Q I believe you said in your testimony that the nature of the retail establishments or at least some of them had gone on the decline, is that correct?

A That's correct.

Q Would you elaborate on what you meant by that?

A I think they traded down.

Q I am sorry, I don't understand that term.

between 79th and 80th?

Q No.

A Then I don't know.

Q Are you familiar about a store called LeMan's?

A No, I am not.

Q Are you familiar with a store called Furniture and Things that's on Columbus Avenue between 93rd and 94th Street?

A I have seen their ads. I am not familiar with the shop.

Q Would that be within the Urban Renewal area?

A Where did you say?

Q On Columbus Avenue between 93rd and 94th.

A It would.

Q Are you familiar with a store on Columbus Avenue at 93rd Street called ENS Sportswear? Would that be within the Urban Renewal area?

A I am not.

Q Mr. Fried, I believe you stated earlier today that you had read in the paper of plans to complete or carry on with the continuation of development in the Urban Renewal area, particular Sites 40 and 44, is that correct?

A I read in the newspaper a statement by Commissioner Lee Goodman that the state was prepared to finance two additional projects in the West Side Urban Renewal area and make available to them the Section 236 subsidy.

Q Are you familiar with the announcements of these plans other than what you have read in the paper?

A No, sir.

Q Let me state it as a hypothetical. If plans were announced to complete the remaining sites in the West Side Urban Renewal area in accordance with present plans, would you regard that as a good development, a good news for the area?

A Yes.

Q I believe it was your testimony in October when you were evaluating the various indices that you were considering in evaluating the tipping point question the possibility that there may not be any further development of the area because of the unavailability of

federal funds. Was that your testimony?

A Yes, sir.

Q And that was one factor in your opinion on the tipping point question, is that correct?

A No. What I said, if I recall correctly, was that in trying to determine the number of units for families of low income within the area, you either had to take what already has been created and add to it that which was planned, if it could be executed, or take the numbers that have already been created and add to tha: the low income units that are existing in deteriorating buildings that haven't been demolished yet. You have to do one or the other. It will go ahead or it won't.

Q Mr. Fried, I would like to quote from page 607 of the transcript, which was part of your direct testimony in October.

Do you have it with you?

A If you will start read -- some of these pages are not numbered. They didn't come out right.

Q I can show it to you.

A Is the top line "I would"?

Q Yes, that's right.

A All right, that is the page.

Q Reading a couple of lines down from line 5. "There has been almost a complete cessation of the elimination of substandard housing. Because of a lack of funding there has been no provision for new residential development. There is less encouragement of permanent residents because of the nature of the accommodations being built."

That was your testimony?

A Yes.

Q And was that not one of the factors which you gave in giving your opinion as to the tipping point theory?

A The answer goes on. If you look at the balance of it, all together is what went into my opinion.

Q Yes, but this was one factor, was it not?

A Yes.

Q So, if that factor was no longer the case and the elimination of substandard housing would pick up again and the area development was completed, wouldn't that lead you to conclude that tipping was less likely as a result?

A It would be one factor certainly.

Q One factor that would make tipping less likely, is that correct?

A Yes. May I amend that answer?

Q Yes, sir.

A It would depend on the nature of the occupancy of those buildings.

Q Could you elaborate on that?

A Yes, if they were occupied one hundred percent by a minority, I would say the neighborhood would tip.

Q Are the present plans for the completion of the area to have one hundred percent minority, as you put it?

A The plans only call for construction. Who moves in depends on the market and people's attitude.

Q Well, does that construction come under a certain program?

A You mean the financing thereof?

Q Yes.

A Yes.

Q Isn't the financing program, would that not dictate the kind of rent levels in that building?

A Yes.

Q Mr. Fried, I would like to refer again to Plaintiffs' Exhibit 21, which is the memorandum you wrote to Robert Hazen on December 3, 1968. I believe you stated this morning that one of the reasons that

prompted you to write this recommendation to Mr. Hazen, although it is not actually stated in the memorandum, is that certain developers of cooperatives did not feel that they could market their cooperative apartments if the changes which were proposed were made, is that correct?

A Yes, that's correct.

Q I would like to show you the exhibit again, Plaintiffs' Exhibit 21, and ask you which of those projects, if you can remember, are cooperative projects?

A I don't remember.

Q Do you remember --

A I know Trinity House isn't.

Q Pardon men?

A I might be able to figure it out by determining whether we are renting in them.

Q Could you do that?

A Columbus House is a rental.

Q Which site is Columbus House so the record will show it?

A Site 10. These would all have to be rentals. I just thought of it.

Q They are all rentals?

A Yes, they both have to be. Otherwise we

couldn't have had the low income units in there.

Q Could you elaborate on that last statement?

A It is only under the state capital grand program that you can have low income families in a coop. The Housing Authority may not lease in a coop or by cooperative apartments.

Q So that when you said that the inability of the developers to market their cooperatives was one of the reasons that you wrote this memorandum to Mr. Hazen, it didn't actually refer to these particular projects which are on the caption of the memorandum?

A No, it may very well be at the time that was written the plan was to make them cooperative and they were subsequently converted to rental units.

Q You are saying they are now rental projects but they may have been planned to be cooperative at the time?

A I would say in the original plan it was contemplated that practically all of them would be coop.

Q Practically all of them, but do you know which ones would be or do you remember?

A Offhand, no.

MR. DOUW: May I have a moment, your Honor?

THE COURT: Surely.

(Pause)

MR. DOUW: I have no further questions.

THE COURT: Mr. McLoughlin, would you like to participate?

MR. MC LOUGHLIN: No, your Honor.

THE COURT: It is rather early for you. You might really want more time to be ready and I am sure Mr. Fried will make himself available for your examination at a later time.

MR. MC LOUGHLIN: I have no questions at this time.

THE COURT: Before you go into redirect, Mr. Morris, the witness has referred to a survey or a study with regard to Park West Village. You said it appeared in the New York Times and he had doubts of the overall picture presented by that survey. I am particularly interested in knowing what the witness' explanation is for the relative success of that project.

Since the New York Times article is adopted by him, would you gentlemen agree on letting it go in so that I may have the benefit of a much more comprehensive study than would otherwise be made possible by just some oral questions to the witness? Just look

at that survey ourselves and see whether it might be helpful to the Court.

. . . I don't care whether it comes in through him or comes in through someone else. I am anxious to get an answer as to why the Park West Village comes off relatively well in the middle of an area of unremitted condemnation, if we are to accept the version of what's going on there of the witness now on the stand.

Mr. Morris, won't you take a few minutes recess and then pick it up on redirect.

MR. MORRIS: Yes. Before we do, your Honor, my next witness is a lawyer, Mr. Eliot Lombard and he was in court this morning, but he went back to his office.

Now, it depends on when the Court proposes to adjourn today.

THE COURT: We sit until about 5:00 o'clock, a quarter of 5:00.

MR. MORRIS: Then I will have him back.

THE COURT: Very well. Short recess, Mr. Clerk.

(Recess)

THE COURT: Mr. Morris, won't you please proceed with your redirect.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Fried, I show you a site clearance map of the West Side Urban Renewal area, dated January 1973, which shows cleared parcels and new constructions and rehab underway or completed and ask if you are familiar with this map?

THE COURT: Would you mark it for identification, please, Mr. Morris.

(Plaintiffs' Exhibit 30 was marked for identification)

THE COURT: Will you look at 30 for identification, please, Mr. Fried.

THE WITNESS: Yes.

THE COURT: Next question.

Q Does that map show the location of the projects which are cleared and those which are not cleared in the West Side Urban Renewal area?

A I don't know whether this represents those that are cleared or those that are intended to be cleared.

Q I think this is a map which represents those that are cleared.

A Then it so represents.

MR. MORRIS: I offer it in evidence.

THE COURT: That doesn't make it testimony.

MR. MORRIS: The map speaks for itself, your Honor.

THE COURT: All right, if you say so. Let counsel examine it to see whether they have any objection.

MR. LAND: This represents a map as of 1973?

MR. MORRIS: Yes.

MR. LAND: I see the date here revised as of October of 1969.

MR. MORRIS: L973.

MR. LAND: That doesn't seem to be a date That seems to be an indication from the printing office.

MR. MORRIS: That is the date. We got that from the City's records. That was given to us by Mr. --

THE COURT: Sold.

MR. MORRIS: Not Mr. Gold, Mr. Seligson who has charge of this area and when I requested the latest map of the West Side Urban Renewal area with the progress of what had already been done, this was the map he furnished me.

THE COURT: Who is Mr. Seligson?

MR. MORRIS: He is in charge of the West Side

Urban Renewal area at the HDA and I showed this map to counsel and told them I was going to introduce them in evidence.

MR. LAND: Mr. Fried is not familiar with the map. Maybe Mr. Seligson would be the proper person.

THE COURT: The question is do we want to spend time, if on its face it is quite clear. If it is not, let's not waste time. I don't care about which witness it can be brought out through. Let's avoid it if we can. If we cannot, state your position and that is it.

MR. LAND: What is the relevancy of this document?

MR. MORRIS: To give the Court the latest picture of what the situation is with respect to the progress of the West Side Urban Renewal project.

THE COURT: Since they have some hesitancy and it is quite evident, they have been very cooperative in the litigation here, and I am sure that they seem to be a little bit worried on it, let them check it out and you can always re-offer it. All right.

MR. MORRIS: Mr. Gold, will you concede that this is from the City's records?

THE COURT: Do you happen to know, Mr. Gold?

MR. GOLD: No, your Honor, I am sorry I do not know.

THE COURT: All right.

MR. GOLD: As a matter of fact, I am not disbelieving of counsel.

THE COURT: Of course not.

Mr. Morris, what do you gain one way or the other? It will be offered later, that is all. Give them a chance to check into it. That is all they want. On the surface of things they have some doubt. Let them remove the doubt or stick to their doubt. Let's see what happens.

MR. MORRIS: Very well.

THE COURT: Next question.

Q r. Fried, I show you another map of the west side urban renewal area with certain areas marked in red.

THE COURT: Mark it for identification.

MR. MORRIS: I ask it be marked for identification.

xvx

(Plaintiffs' Exhibit 31 was marked for identification.)

Q And ask if these are the areas, the projects or the sites in the west side urban renewal area marked in red which have not as yet gone into construction?

A Those are the sites not yet in construction.

MR. MORRIS: I offer it in evidence.

THE COURT: Show i to counsel.

MR. MORRIS: I have already given a copy to counsel.

THE COURT: Any objection?

MR. GOLD: Your Honor, I have the same reluctance with reference to this one and even perhaps more emphatic. It appears to be a map bearing the last date of March 1966.

THE COURT: Gentlemen, let me interrupt you. It is very, very simple. There are judges who will spend a couple of hours getting this into evidence. In these 36 years I have been a judge I will not tolerate it and never

will. Lawyers are supposed to get together and say, this is it or this is not it.

First check it out and renew it later. Let's go.

Next question.

If you have any doubt about it, check it out. Let's save some time.

MR. LAND: I compared the markings on this map with page number 4 of Government's Exhibit G. Page number 4 of Government's Exhibit G setting forth these sites which are planned but nothing has been developed on them. They correspond to this map except in one instance which is Site 39.

THE COURT: Will you be good enough to count on the judge a bit for a little bit more experience on it. That is all I ask. I asked you to do something. Do it. It doesn't have to come into evidence right this very second.

The case is not going to be resolved by it being introduced into evidence right now. Suppose it is introduced tomorrow; nothing is lost. Give yourselves a chance to study it.

If you have doubt, then you should show how you feel about it and if you have doubt I am not going to press you. I'm not going to say, go ahead and agree. You are here to do a job. Do your job according to your conscience.

Next question.

Q Mr. Fried, I show you a xerox of a page taken from a ledger in the office of the Comptroller of the City of New York relating to the west side urban renewal project headed, "Occupied lease public housing in west side urban renewal area," showing Columbus House, Columbus Manor, Leader House, New Amsterdam House, Tower West, Trinity House and West Wood House, indicating in one of the columns the number of occupied apartments receiving public assistance and ask if this is a schedule of the welfare tenants in those houses?

A It purports to be.

MR. MORRIS: Mr. Gold, I ask you to concede that this schedule is the one that you and I discussed this morning and that was taken from the books of the City showing the number of welfare tenants in those projects.

MR. GOLD: Mr. Morris, I have some difficulty with that. I can tell you that I have in my possession the original of this that I obtained just this morning. I do not know where the numbers listed came from. It is on a sheet which says "Office of the Comptroller."

THE COURT: That being the case, you cannot without further contemplation allow it into evidence. That is all there is to that and check it out. That is all.

MR. GOLD: Yes, your Honor.

I have a further objection to Mr. Fried's identifying this exhibit. There is no indication that he has ever been a part of the office of the Comptroller.

THE COURT: You are absolutely right. Mr. Morris, it seems to me a long time ago we had an understanding that if you have any paper on either side, you just show it to the other and say, I am going to present this to the judge. Have you any objection? Let's get a better copy or let's check it out or let's get this, let's get that and hand it up to the judge.

Why should we start now to pick these things to pieces before counsel has had a chance to put their exacting eye on the offer?

I suggest, Mr. Morris, that you give them a chance to check into it and come up, as they probably will, with an agreement with respect to it.

Is that all right?

MR. MORRIS: That is perfectly acceptable.

THE COURT: Mark it for identification in the meantime, please, Mr. Clerk.

(Plaintiffs' Exhibit 32 was marked for identification.)

THE COURT: According to the Court's earlier ruling, no

xvx

document is to suddenly be shoved up to counsel unless they have had a chance to see in advance what is contemplated. It is a saving of time. It gives them a chance to really decide whether they are going to take one position as against another and it is the kind of fair play that you all endorse.

Q Mr. Fried, you testified to the development of the west side urban renewal plan in the early years, in the 1950's. Now, was there a change in the National Housing Act with respect to the development of urban renewal plans in or about 1954 at about the time the west side urban renewal plan was conceived?

A There was.

Q Would you tell us what that change was?

A Up until that time the Act, which was the basis for urban renewal --

MR. LAND: Your Honor, we would interpose an objection. If he is speaking as to changes in statutes, that would be something available for the attorneys to set forth rather than Mr. Fried's commenting upon the law.

THE COURT: I will take it. Objection overruled. Go on.

A The law provided for what was known as slum clearance, the complete relocation and demolition of an area

and it referred only to deteriorated areas as eligible for urban renewal.

The change that was made was to allow certain urben renewal activities to take place in an area that was deteriorating rather than deteriorated. Instead of total clearance, you could have spot clearance and rehabilitation.

B2 Q Was the west side urban renewal plan the pioneer project proceeding under this amendment in 1954?

A In New York City, it was.

Q Wasn't that the basis for the development of the plan?

A It was.

Q At the time you were a public official, a federal official in the early years, an official of the HRB in the early 60's and of the HDA in the later years of the 1960's, did you have occasion to deal with purchasers and lessees, tenants, who went into occupancy in the area with respect to the terms of the urban renewal plan and their performance?

A Yes.

THE COURT: Would you let the witness tell me what those letters stand for? I am not familiar with them.

Q Would you tell the Court what the HRB was?

A That was the Housing and Redevelopment Board,

which was created by the State Legislature to administer the urban renewal and the Mitchell-Lama programs in the City of New York.

Q Were you a member of that board?

A I was.

Q What membership did you have?

A I was a board member.

Q Were you also vice chairman of that board?

A Every six months.

Q What is the HDA?

A That is the Housing and Development Administration, which was originally created by executive order of Mayor Linsay, subsequently by enactment by the City Council which joined all of the functions of HRB with those of the Building Department, the Housing and Rent Administration.

Q Were you also the Regional Director for the HHFA and would you tell us what those letters mean?

A That was the Housing and Home Finance Administration, which existed before the Congress created the Department of Housing and Urban Development.

Q Were you also an official of that agency?

A I was.

Q What office did you hold?

A I was the Regional Administrator.

Q That was during the late 1950's; is that right?

A That was from 1955 to 1960.

Q During all of this period from 1955 until you went with the Housing Authority in 1970, did you have supervision of work that was being done in the west side urban renewal area?

A Of different natures, yes.

Q Did you advise purchasers and developers and tenants that the plan would be performed in accordance with the provisions of the urban renewal plan as approved by those agencies and by the Board of Estimate and the City Planning Commission?

A As they then existed.

Q As they then existed?

A Yes.

Q Did you also enter into contracts with developers in the pilot area which required written approval of any changes in the plan with respect to developers in the west side urban renewal project?

MR. LAND: Objection to the question, your Honor.

THE COURT: I beg your pardon?

MR. LAND: I am objecting to the question.

THE COURT: On what ground?

MR. LAND: He is speaking of some written approval. I would like to see some of these contracts he is referring to before the question is proper.

MR. MORRIS: We will produce the witnesses, your Honor, whose contracts will be introduced into evidence containing those provisions.

THE COURT: Very well, I will take it.

A There were such contracts.

Q When changes were made in the urban renewal plan, was written approval obtained from those developers?

A I don't know.

Q Now, in your opinion, as the urban renewal plan was originally conceived, would it have led to a well balanced neighborhood both ethnically, socially and in every other way if carried through to completion?

A In my opinion, yes.

Q As it has developed up to the present time, in your opinion has it developed in that way up to the present time?

A Yes.

Q I mean including the period subsequent to 1970?

THE COURT: Up to the present time.

A I would say that from 1970 to the present time

it began to become doubtful. Certainly up to 1970 it was being carried out in the manner which in my opinion would produce the desired results as expressed in the plan.

Q Mr. Fried, do you have a copy of the minutes of your earlier testimony?

A Yes.

Q Would you get them, please.

Look at page 477, lines 19 and 21.

A Yes.

Q You will find the following answer by you to the question:

"At the same time the approval of the blank phase..."

Was that your testimony?

A No.

Q Would you tell us what the words "blank phase" should be?

A Let me read back a moment. "At the same time as the approval of the survey and planning application."

THE COURT: Wait a minute, let's hold it. If that is correct, gentlemen, this is what the witness is testifying under oath before me now, that it is apparently an error, according to him, and it should read so and so. If that is actually so, I'm going to enter an order that the

minutes be changed accordingly.

Now, will you read to me, please, the sentence that you say does not reflect what you testified to.

THE WITNESS: "At the same time the approval of the blank phase."

THE COURT: What should it be?

THE WITNESS: At the same time as the approval of the survey and planning application."

THE COURT: Any objection?

MR. LAND: Let me just put down the words. "As the same time as the" what?

THE WITNESS: "The survey and planning application."

THE COURT: So that the complete sentence, if you don't mind, Mr. Fried, would read how?

THE WITNESS:"At the same time as the approval of the survey and planning application."

(Continued on page 827.)

T4Afol

THE COURT: The Court directs, unless I hear some objection, that the minutes be changed to read as just stated by the witness under oath.

Q Go to line 21. Has the same error occurred with respect to line 21?

A Yes.

Q How should that read?

THE COURT: First read how it is now.

THE WITNESS: "And was the matter then submitted to the Board of Estimate for approval of the blank advanced and the capital grant reservation?"

THE COURT: What should it be?

THE WITNESS: "And was the matter then submitted to the Board of Estimate for approval of the survey and planning application and the capital grant reservation?"

THE COURT: Take it slowly. How should it read now?

THE WITNESS: "And was the matter then submitted to the Board of Estimate for approval of the survey and planning application and the capital grant reservation?"

THE COURT: Unless there is any objection, the Court directs that the minutes be corrected accordingly.

Q I ask you, Mr. Fried, to turn to page 492 of the minutes --

THE COURT: And the court reporter is directed to make these changes exactly in accordance with the Court's order.

Q Do you have page 492, Mr. Fried?

A I do.

Q If you will look at line 5:

"Q Would you tell us what those discussions were?"

And then there were some interruptions.

Would you answer that question and tell us what those discussions were and tell us what they related to?

A I will have to look back and see what they related to.

Q Please do.

A Yes, as I recall it --

MR. LAND: I think the Court ruled on that occasion that since there were documents reflecting what the discussions were, the Court said in lines 13 to 15, your Honor speaking, "If you have documents that sum it up, then I don't see the sense going into details of a discussion."

The Court has already ruled as to the content of a discussion set forth in documents; produce the documents.

MR. MORRIS: Your Honor, we have produced the documents, they have been introduced into evidence, but I

still think it would be helpful to the Court to hear Mr. Fried's version of what the discussions were leading up to those documents. I did not ask him the question at the time the objection was made because at that time the documents were not in evidence. The documents are now in evidence, they are before the Court, and I would appreciate an opportunity of having the witness tell the Court what the circumstances were leading up to that discussion.

THE COURT: You will help me tremendously if you tell me which documents you are referring to. How have they been identified before me?

MR. MORRIS: They are the documents relating to the discussions with respect to the number of low income units to be built into the project. They relate to Plaintiffs' Exhibit 1, Plaintiffs' Exhibit 2, Plaintiffs' Exhibit 3 --

THE COURT: And you say those were introduced subsequent to the comments?

MR. MORRIS: There were a number of them introduced over an extended period of time, some of which were before, some of which were later, but in order for the Court to have the complete picture, I introduced all the documents and there were a great many of them, relating to this question of how many units of low income housing were to be

included in the project.

THE COURT: And what is it you want to develop from this witness?

MR. MORRIS: I want Mr. Fried to tell us about the discussions that went on which led to the development of the number of low income units in the project. There were a number of discussions had among the government officials in charge, and I think the Court is entitled to hear what those discussions consisted of in addition to having the documents themselves which certify what the amounts were.

MR. GOLD: Your Honor, we don't know if Mr. Fried was present, we don't know when it took place.

THE COURT: If he wasn't present, or any of those fundamental objections exist, why, I won't take it. That's obvious. I will take it otherwise.

All right, gentlemen.

Mr. Land, your objection is recorded and the objection is overruled.

First, however, you must establish the familiarity of this witness with what you intend to bring out in his identification. Was he there, etc.?

BY MR. MORRIS:

Q Mr. Fried, were you present at such discussion?

A At several of them.

MR. LAND: Objection. What discussion on what date?

THE COURT: You are absolutely right. Objection sustained.

Q Mr. Fried, were you present at discussions among the various government officials who were involved in the development of the number of low income units to be included in the west side urban renewal area?

A I was.

THE COURT: Who were those officials? Identify them, will you?

THE WITNESS: There were the three members of the Housing Redevelopment Board, of which I was one, there was Mayor Robert Wagner, there was Commissioner Felt and Commissioner Badillo.

B2 Q Were discussions had with respect to the number of low income units required in the west side urban renewal project?

A There were.

THE COURT: Did you represent the Authority in connection with those discussions?

THE WITNESS: No, I represented the Housing and Redevelopment Board of which I was then a member, in con-

junction with the other two members.

THE COURT: And did you personally appear and hold conferences with these personages that you have named?

THE WITNESS: I did.

Q Would you tell what those discussions were, fixing the time and place of the discussions and who was present at the respective meetings, to the best of your recollection?

THE COURT: That is important and you must take each one separately and give us your best memory as to when and who was present. That counsel have a perfect right to have in great detail so they can meet what you have to testify about.

A There were several meetings in Gracie Mansion and in City Hall during the spring of 1962 as a result of a study that had been made by the then Commissioner of Relocation, Herman Badillo, and a position paper prepared by him, which called for a number of units for relocation purposes, low income family, far in excess of that provided for in the urban renewal plan which had been approved by the City Planning Commission in May of 1962.

The discussion centered on how many units could safely be put into the west side urban renewal area without--

THE COURT: I hate to interrupt you. If I were

asked about an event that was important to me in '62, I might also have some difficulty in exactly remembering every person who was present and where the conference was held because those things usually are done to accommodate this one or that one, but what is your best memory as to where the first conference dealing with this subject matter was held?

THE WITNESS: In City Hall.

THE COURT: And who was present, as you best recall?

THE WITNESS: The Mayor, Mr. Badillo, Mr. Felt, Mr. Milton Mollen.

THE COURT: And who is he?

THE WITNESS: He was then the Chairman of the Housing Redevelopment Board. And myself.

THE COURT: If you don't mind, Mr. Morris.

Would you just concentrate on that for the time being, Mr. Fried, please. Just block out right now everything you were going to say and concentrate on that particular session.

What was said and by whom on that occasion?

MR. LAND: We still don't have a date, your Honor.

THE COURT: Of course.

THE WITNESS: It was in the spring of '62.

THE COURT: It is quite evident to me the witness doesn't have the exact date.

MR. LAND: Spring of '64?

THE WITNESS: '62.

THE COURT: '62.

Go ahead.

THE WITNESS: It was probably the end of May or the beginning of June, because we were going before the Board of Estimate for the approval of the plan in June of '62.

Mr. Badillo claimed that a much larger number than that provided for in the plan would be required to satisfactorily relocate the low income families within the west side urban renewal area, and it was his position that this number should be expanded greatly. Mr. Felt --

MR. LAND: He is talking in generalities, a conclusion of what someone told him. Unless he can recall the words, I think we are being unfairly impinged upon.

THE COURT: Mr. Land happens to be right. What you are doing is giving us the essence rather than the substance. We don't expect you to remember each word, but Mr. Badillo spoke up and said, in effect. Will you put it that way?

THE WITNESS: May I see Defendant's Exhibit D, please?

THE COURT: Certainly. You see, don't summarize what was said. Don't give us your evaluation of what was said. Tell us what each one said, in substance, if you do not remember the exact words.

THE WITNESS: I would say my answer is Mr. Badillo's position was substantially as contained in Defendant's Exhibit D.

THE COURT: Will you give me --

THE WITNESS: It's a long thing, your Honor.

THE COURT: Did he say all of that?

THE WITNESS: He summarized it.

THE COURT: Tell me. I asked you to be good enough to tell me what you remember was the substance of what he said.

THE WITNESS: He said in substance that he would require at least 2,500 units within the urban renewal area and the area contiguous thereto and a thousand units in the turnover of the existing public housing, to wit, Douglass Houses and other public housing that would be built within the west side urban renewal area.

THE COURT: That is what he said in substance, is that right?

THE WITNESS: Yes, sir.

THE COURT: What was said by anyone else at that conference?

MR. LAND: Is Mr. Fried reading from some notes?

THE COURT: I don't know.

Are you reading?

THE WITNESS: Yes. I have a list here of the various exhibits that were submitted, and I looked at this to find out in which exhibit Mr. Badillo's statement was.

THE COURT: He came up with D.

THE WITNESS: I have a list here of the exhibits that were introduced by the plaintiff and defendant. Some of them I added as they were identified later.

THE COURT: You mean in this matter before me?

THF WITNESS: Yes. I knew you had introduced a statement by Mr. Badillo and that that contained essentially his position as it was expressed at the time of this meeting in City Hall.

B3 THE COURT: You have a right to find it out.

All you were looking at, t.en, was a list of the exhibits in order to identify which one contained Mr. Badillo's full statement?

THE WITNESS: That's right.

THE COURT: Now go on. What else was said? He

made that statement. What do you remember was said by anybody else with regard to that matter?

THE WITNESS: As I recall it, Mr. Felt and I think Paul O'Keefe was then the Deputy Mayor, took the position that the urban renewal plan as it had been prepared by the Housing and Redevelopment Board and had heretofore been approved by the City Planning Commission contained 1,630 units, which is in Plaintiffs' Exhibit A, and that if we went in excess of the 1,630 units, you would jeopardize the possibility of private enterprise investing within the urban renewal area.

MR. LAND: Your Honor, I move to strike unless it is shown both of these two individuals are currently alive and have otherwise reduced their statements which Mr. Fried is testifying on to writing. There is no way to verify whether in fact the individuals did make such oral statements if they are now deceased or if their statements were not reduced to some memorandum or writing.

THE COURT: I will take that subject to a motion to stike, but that is the only way I know how to do it. I will let the witness go forward and allow you, at the appropriate time, to make appropriate motions to strike any portion of it.

All right. What else was said on that occasion?

Just concentrate on that occasion.

THE WITNESS: Mayor Wagner then decided --

THE COURT: No, not then decided.

THE WITNESS: Stated.

THE COURT: That is the operation of his mind.

THE WITNESS: Mr. Wagner then stated that in his opinion a statement should be made by Mr. Mollen when he appeared before the Board of Estimate in June and requested the approval of the urban renewal plan that it was the intention of the City to provide 2,500 units of low rent housing both within the urban renewal area and in the three sites adjacent thereto, including rehabilitation, rental units and new construction.

THE COURT: What else was said and by whom at that first conference that you are narrating?

THE WITNESS: After the Mayor said that, nobody said anything else.

THE COURT: Mr. Felt did not rejoin, as you recall it?

THE WITNESS: He did not.

THE COURT: Even though the positions of Felt and the Mayor were at sharp variance?

THE WITNESS: Yes.

(Continued on page 839.)

BY MR. MORRIS:

Q In connection with that conference that you just testified to, had there been other discussions among various government officials with respect to this subject so that the discussions preceded or led up to this conference that you just described?

A There were a number of discussions which resulted in written documents either in reports or in plans for the project area.

THE COURT: So that the amount that was ultimately set forth in the documents which have been introduced into evidence before this Court were the result of extended discussions and exploration by government officials of that particular situation, isn't that so?

THE WITNESS: That's so.

Q Mr. Fried, would you turn to page 515, line 16.

THE COURT: Mr. Morris, you know what you are up to and what you want to do. Didn't you say you were going to have a lawyer in court as a witness?

MR. MORRIS: Yes. He is here now.

THE COURT: Every time we hold a trial here and a doctor, an M.D., comes in, we stop everything and everybody has to remain immobile while we say, "Doctor, won't you take the stand."

A member of our own profession is here.

Step down, sir.

Come on, Mr. Witness, whoever he is. Put him on the stand.

MR. MORRIS: I think Mr. Fried is entitled --

THE COURT: Please, do what I say, unless it is going to disrupt the order of your questioning.

MR. MORRIS: It won't disrupt the order of my questioning.

THE COURT: Cross-examination has to take place. It is 4:00 o'clock. Do you have any objection to calling him?

MR. MORRIS: No.

THE WITNESS: I also am a lawyer.

THE COURT: You have a long trip before us. You are not through.

All right, Mr. Attorney, whoever it is.

XVX E L I O T L U M B A R D, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

THE WITNESS: May I make --

THE COURT: No. There you go. Please make an exception to the rule that lawyers make the worst witnesses.

THE WITNESS: I wanted to accommodate Mr. Fried.

THE COURT: I am running the court. You are here

as a witness.

Go on.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Lumbard, where do you reside?

A 382 Central Park West, New York.

Q Is that Park West Village?

A Yes, it is.

Q Is that the project immediately to the north of the west side urban renewal area?

A Yes, it is.

Q Are you connected in any way with the Trinity School?

A I am.

Q What is your occupation, Mr. Lumbard?

A I am an attorney.

Q And how long have you been admitted to practice?

A Since October, 1953.

Q And have you practiced in New York City since that time?

A Continuously.

Q And will you tell us what your connection is with the Trinity School, the plaintiff in this action?

A Currently it is as --

MR. LAND: There are two Trinity plaintiffs, the housing corporation and the school. I would like to make sure which one we are speaking of.

MR. MORRIS: Mr. Lumbard will make that clear.

A I am a Trustee of the Trinity School and have been since 1964. I am the President of the Trinity Housing Company, the corporation. It is a separate, wholly owned subsidiary of Trinity School, which owns the firm and has since its inception. I am also a parent of a daughter now in the tenth grade at Trinity and my son was there through the entire 12 grades starting in 1959.

(Continued on page 843.)

4Bfol

Q Did you have anything to do with the Parent's Association of the Trinity School?

A Yes, in the period 1962 to '63 immediately prior to becoming a trustee, I was the vice-president of the Trinity Parent's Association.

Q And did you have anything to do with the Ad Hoc Building Committee of the Trinity School project?

A I was chairman of that particular committee of the board of trustees.

Q And in connection with these various activities and positions that you occupied for Trinity, are you familiar with the situation which existed with respect to the Trinity School becoming a sponsor of Site 24 in the West Side Urban Renewal area?

A I am.

Q Now, would you tell us what occurred with respect to the interest of Trinity School in the Urban Renewal plan in the West Side Urban Renewal area in or about the early part of the 1960s?

A Yes, sir. Trinity School at that time was owned by a corporation called The Trinity Episocpal Schools Corporation. There was a strong movement in that body, in its board and in various of its affiliate organizations, alumni associations and otherwise to move

the school to another school that had been purchased by the board called Trinity Pawling which is located in Pawling, New York on Route 22. That school is a four-year preparatory school, had been in the possession of Trinity School for several years. The headmaster at Trinity School in New York had been transferred to the Trinity Pawling School, a Matthew Dann and due to the deteriorating condition in the neighborhood, there were many who wished to see the plant, the whole school facility, in New York closed and the school moved to Pawling.

MR. LAND: This testimony now being offered appears to be related to facts prior to the earliest date. As Mr. Lumbard indicates he is acting on behalf of Trinity. I wonder how the witness would have competence to testify on such facts.

MR. MORRIS: Mr. Lumbard testified his children went to the Trinity School, he was vice-president of the Parents Association and that he had activities with the Trinity School going back to 1959.

THE COURT: I think there is sufficient --

MR. LAND: I don't think there was any testimony yet about Mr. Lumbard's activities going back to 1959.

Q When did your activities with Trinity School first start, Mr. Lumbard?

A They commenced in 1959 with the entrance of my son John into the first grade.

THE COURT: Then Mr. Land is correct. Now that that is established I will let you go ahead, Mr. Lumbard.

A There was considerable controversy within the school community about whether to leave New York and go to the country or not.

MR. LAND: Your Honor, I am sorry to object, but Mr. Lumbard has not yet shown he is competent to testify as to what he is now testifying about. Hiw son was enrolled in '59. Certainly we are talking about controversies. Did the son bring the information home to him?

THE COURT: Will you be just a little patient. Let him get off the ground a bit and let's see what he has in mind. It can't all be said in one sentence. So far I get the impression that by virtue of the fact that he has two children who attended there he wants the fact finder, based on my estimation of the witness, to conclude that he had not only a by-week interest in this institution but that he had an everyday interest throughout

the years. That I gather is what is going to be pressed upon me. Let's give him a chance to expand to see whether or not he was in a position to make the observations he is going to contend came to his attention. Objection overruled.

MR. LAND: Your Honor --

THE COURT: You make a motion to strike as soon as I hear what he has to say.

MR. LAND: What I am suggesting is perhaps we can put the cart before the horse and have him testify as to his competency and then give the bloody story, so to speak.

THE COURT: No, I will take it the way it is eing developed. In fact, if I may be so bold, I might take that way myself.

Go ahead.

A There were meetings of the Parent Association, of which I was a participant and officer, as I have testified. There were meetings amidst the board at various times and these general meetings came to two points.

The first was a view to leave the city and the West Side on the ground of its rapid deterioration and the other was to get out into the country in a very simple flight from the conditions.

THE COURT: And you're undertaking now to tell us why the flight program was abandoned and you remained in the city?

THE WITNESS: Yes.

THE COURT: Go ahead.

THE WITNESS: The flight program was abandoned because a number of persons in the school, of which I was one, and by "the school" I am talking of the whole school community, board, Parent's Association and otherwise, decided to stay in the city and make a commitment to the city.

Also, the movement to the country would have meant that there would have been an essential change in the character of the school from a day school here in New York covering all 12 grades to a rural traditional New England style four-year ~~proprietary~~ preparatory school. Those are two different educational conceptions. It would have meant that the high school student body would not have been as deeply affected but of course it would have left without a school facility the first eight grades. Many members of the board who were graduates of the school going back as far as 1897 at that time playing a role in these discussions were emotionally involved as to the particular building in which they had gone to

school, and that is the old facility, the oldest of the buildings on 90th Street, and this controvery went back and forth for several years.

Is that an answer to your question?

Q Yes.

Did you have discussions with government officials with respect to the West Side Urban Renewal plan that had been proposed for that area at about that time?

A Yes, I did.

Q And would you tell what those discussions, were and who they were with?

MR. LAND: May we have the officials identified, time and place?

THE COURT: Precisely, and by what authority they represented the school at the time other than his own personal interest in the institution.

Would you answer that? About when was this, Mr. Lumbard, and by whose authority did you act to represent the school?

THE WITNESS: In the period 1963 I was a vice-president of the Parent's Association. Our headmaster at that time, a Hugh Riddelberger, was in the process of leaving and then left. The head of the upper school, a

Mr. Bruner-Smith was made acting headmaster. We had a discussion about Site 24, which is the number of the site where Trinity School had been built and is immediately adjacent to the old school buildings. That site at that time was being cleared and as the old buildings came down they precipitated another series of discussions within Trinity School because the buildings were right next to our building.

I asked Mr. Bruner-Smith, then the acting headmaster, what was going to happen with that property. He said to me that there was an extensive file involving attempts by the City to enlist Trinity's interest as a sponsor of the Site 24 and that those communications had largely been with Mr. Riddelberger and would I care to read the file.

I took the file home with me. It seemed to me that it was entirely feasible, although obviously it would be very difficult to work out for Trinity to interest itself in Site 24, which it had not done up until that point in time.

THE COURT: I am sorry. All of which we will be able to receive, otherwise this is subject to a motion to strike --

THE WITNESS: I am coming --

THE COURT: You have to answer that first. You have to give us the foundation which allows me to receive what you are talking about now.

Was there a government board of the institution at the time that authorized you to carry on any negotiations in its behalf?

THE WITNESS: My authority did not come from the board, it came from the acting headmaster, Mr. Bruner-Smith.

THE COURT: And about when was this, Mr. Lumbard?

THE WITNESS: It was in 1963, your Honor, and I believe it was the spring but I am unable at this date to be more accurate in picking the exact time.

THE COURT: And what was the scope of what he asked you to undertake to do for the school?

THE WITNESS: To review the file of correspondence at Trinity which related to the entire subject of the West Side Urban Renewal plan and Site 24.

THE COURT: And you did so?

THE WITNESS: I did so.

THE COURT: Thereupon, did you actually come in contact with any public official with respect to this undertaking?

THE WITNESS: I did.

THE COURT: And who was that?

THE WITNESS: Milton Mullen.

THE COURT: Where did you meet the commissioner?

THE WITNESS: I met the commissioner in the Association of the Bar of the City of New York by happenstance.

THE COURT: That is at 42 West 44th Street?

THE WITNESS: That's correct.

THE COURT: In Manhattan?

THE WITNESS: That's correct.

THE COURT: Do you remember about when it was that you met him?

THE WITNESS: Again in 1963 and I believe at this time that meeting was in the fall, but my recollection is somewhat hazy because it is so distant.

THE COURT: Very well. And who was present?

THE WITNESS: There was present the Special Housing Committee of the Association of the Bar of the City of New York I was a member of. That committee was assigned the task of trying to develope middle income Mitchell-Lama housing for young lawyers in New York, there being a shortage of housing for young lawyers at the time, and the question was whether or not the Association

of the Bar would sponsor, actually sponsor, a Mitchell-Lama facility.

I was assigned to that committee by the president of the Association of the Bar. Mr. Morris happened to be chairman of that committee and that is how I met Mr. Morris. One evening Mr. Mullen appeared as a guest to discuss with the committee, all of us, the feasibility of such an idea. At a recess I spoke to Mr. Mullen together with Mr. Morris about my review of this file and the fact that Mr. Morris had told me the question of who would be allowed to be sponsor of Site 24 was just about to elapse within a week or two and would it be possible for some kind of contrary expression of interest to be made by Trinity School in becoming Site 24 sponsor.

Mr. Mullen said yes, he was delighted, that he regarded Trinity School as a major institution of long term continuity in the West Side Urban Renewal area, that he and members of the board had for a long time been hoping that it would apply, they had actually solicited the schools interest in the past, and that they had been very disappointed that the school had not found its way to do that in the past.

He suggested to Mr. Morris and myself how we

might develope a letter of some kind that would immediately cover this interim period, and such a letter was prepared. I then discussed it with Glover Johnson, then the senior partner of White & Case, and also at that time the head of the Trinity board of trustees. He authorized the dispatch of that letter and it was under his signature.

THE COURT: And that was addressed to whom?

THE WITNESS: It was addressed to Mr. Mullen, as I recall.

THE COURT: And about when?

THE WITNESS: In the fall of 1963.

THE COURT: Is that letter available, Mr. Morris?

MR. MORRIS: No, your Honor. The letter that is available is the letter already in evidence which is dated December 18, 1963, which preceded the letter to which Mr. Lumbard is testifying.

THE COURT: Very well. Please proceed.

THE WITNESS: Preceded or was subsequent to?

MR. MORRIS: Preceded. December 18, 1963.

Q Were your discussions in '63, Mr. Lumbard?

A Yes.

Q Then this letter did follow.

MR. MORRIS: As a matter of fact, it is already

in evidence.

THE COURT: Would you give the number of it, please, so the record is clear?

MR. MORRIS: It's Plaintiffs' Exhibit 12 in evidence.

THE COURT: Very well. May I take a look at it for a moment to refresh my recollection?

(Document handed to Court)

Q Mr. Lumbard, this is a copy of the letter.

THE COURT: Mr. Lumbard, would you take a look at Exhibit 12. That is a letter of December 18, 1963, addressed to Chairman Mullen and signed by Glover Johnson, Chairman and Treasurer.

Would you be good enough to tell us whether that is the letter that you are talking about or is this another letter?

THE WITNESS: This is another letter which followed by, I would say, a month or two, because the interim was occupied with the school organizing itself so as to be able to consider this project. Architects had to be selected, lawyers had to be selected, and there were other various kinds of criteria that had to be met before one could become sponsor.

THE COURT: Examining the copy of 12 in

evidence which is before you, would you say that that reflects what Commissioner Mullen suggested at the meeting before the board of which Mr Morris was chairman at the Association of the Bar?

THE WITNESS: No. The letter that I referred to, the initial letter, is apparently not available or at least I have not seen it. This letter, which is Exhibit No. 12, followed that first letter by several months.

THE COURT: I see. All right.

BY MR. MORRIS:

Q Mr. Lumbard, did you have occasion at or about the time of these discussions to study the West Side Urban Renewal plan itself?

A Yes, I did. Mr. Johnson asked me to participate in organizing some kind of statement or material for the Trinity board of trustees so that it could make a definitive decision as to whether or not it wished to become a sponsor. There were a great many problems presented by this situation and it was a very complex decision for the school.

Q Would you tell us where Site 24 is located physically?

A It is on Columbus on the West Side between 90th

and 91st immediately adjacent to the Trinity School premises.

Q Would you tell us where the Trinity School is located?

A It is on 90th Street between -- in the center of the block actually, Amsterdam and Columbus on the north side of the street.

Q When you explored the possibility of the Trinity School becoming involved in Site 24, would you tell us what occurred with respect to the school facilities and housing on the site as well?

A I am not sure I understand your question, but if it --

MR. MORRIS: Let me withdraw that and reframe it this way.

Q Was the interest of the Trinity School in Site 24, did that involve an interest in expanding the school facility as well as creating housing on the site?

A Yes.

Q Would you tell us how?

A Site 24 at that time was zoned for, I believe, 200 apartment units of middle income, Mitchell-Lama housing. There could be no development of a new school if a facility on that site unless were accommodation to these housing needs. Therefore, the practical problem for the school was how, within this very confined site, to work out an architectural and legal and financial response to this need, namely, 200 apartment units plus a new school facility for Trinity.

We retained Demov & Morris as counsel, an

expert in housing matters. We retained the architectural firm of Brown & Guenther and we entered into various kinds of discussions with a number of contractors to try to get estimates as to costs. In other words, a rather complex study was undertaken.

In the spring of '64 I was made a trustee and Mr. Johnson appointed me the special ad hoc building committee, which was at first chaired by a Dr. Howard Craig. We finally came up with a plan that seemed to indicate tentative feasibility and we thereupon entered into various negotiations and discussions with City officials about this subject.

Q Were meetings had with this development team that you have described with respect to the processing of a Mitchell-Lama project and was it a state or a city Mitchell-Lama project that was in contemplation?

A It was at all times at the beginning state.

Q A state Mitchell-Lama project?

A Yes.

Q Was processing done for obtaining approval of a state Mitchell-Lama project?

A It was. I would like to add here, if I may, however, that although the financing, your Honor, would be under the state's jurisdiction, our immediate subject

of negotiation at that stage was the city. The housing boards of which Mr. Mullen was chairman and on which Mr. Fried sat. In the spring of 1964 we had direct discussions with the housing board and at that time the meetings were held with Mr. Johnson and myself, a representative of Demov & Morris named Louis Pearlstein, and we met on several occasions with Messrs. Mullen, Commissioner Herbert Evrance, Mr. Fried and Commissioner Sam Gratensky, whom I believe is now deceased.

THE COURT: What was his position at the time?

THE WITNESS: Well, in the spring of '64 I don't think he was a commissioner. I think he subsequently became a commissioner but I regarded him at that time and my recollection of him is as a principal person and much concerned with matters that most concerned us at that stage, namely, architectural design, planning the spacing of the building with respect to the other buildings in the West Side Urban Renewal area.

MR. LAND: Your Honor, this background information is interesting, but the contract was entered into. That is in evidence. We have some question as to relevancy of this background recitation as to the issues to be

tried.

THE COURT: It becomes of some value when we come to meet the essential issues that must be resolved here.

The witness so far has given me an intimacy with the problems that then confronted Trinity and that it will be argued gave him a certain valve of what transpired. He was intimate with its history.

Here we are going to go into what is essentially before me and I have to judge whether he knows what he is talking about, whether or not there were some things that escaped his attention that were essential and shouldn't have escaped his attention and I think all of what he is now reciting has a bearing on it. I don't want to go into it forever, so to speak, but I think the amount that has so far been disclosed has its place and will allow it to stand.

Mr. Morris, I am afraid I misunderstood you or you may have miscalculated. A little earlier in the day, you said, Judge, I have got another witness, how long are you going to sit and I said about a quarter to 5:00 or 5:00 o'clock.

I gathered from that that the witness was going to be a short witness or that you thought that

you would be through with Commissioner Fried so as to be able to call another witness, an attorney.

MR. MORRIS: He is not a short witness, your Honor.

THE COURT: What made you think you would be through with Mr. Fried?

MR. MORRIS: I thought we would be.

THE COURT: Good Lord, no. Your own re-direct opened up many questions. I don't know whether counsel intended to follow them. I certainly intend to so I got you wrong and I apologize. I thought this witness was just going to be here for a short time and you wanted to wedge him in or at least get him started, but, you see, what you caused me to believe is that you would be through with Mr. Fried.

Now, if you feel you are going to be through with him, I don't want him to wait around. It is now half past 4:00 and I will sit until 5:00. Mr. Lumbard has to come back anyway. I am just trying to submit to you my desire to cooperate with you, but I don't want to infringe upon anybody's time, if I can avoid it.

Is it your belief, then, that you can be through with Mr. Fried for the time being by recalling him now and let him be subject to further examination

by counsel?

MR. MORRIS: I doubt very much that I would finish with Mr. Fried by 5:00 o'clock, your Honor.

THE COURT: All right, there you are.

MR. MORRIS: Mr. Lumbard has to leave at ten minutes of 5:00, Mr. Lumbard?

THE WITNESS: I have to do whatever the judge wants me to.

THE COURT: No, you go ahead.

I would suggest that since it is all now quite clear what you intended to do, I think this is as good a place as any to let Mr. Lumbard go. Call back Mr. Fried and go as far as you possibly can with him and let's finish with him.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: I am sorry, Mr. Fried, come on back.

W A L T E R F R I E D , resumed.

REDIRECT EXAMINATION CONTINUED

xxxx

BY MR. MORRIS:

Q Mr. Fried, will you turn to page 515 of the minutes. On line 16 where the Court requested that you see if you could find further additions of the West

Side Urban Renewal brochure, Plaintiffs' Exhibit 10, which you testified ran out and that certain other editions were published.

Did you in accordance with the Court's request make a check of that information at the HDA?

A I did.

Q Would you tell us what the result of that was?

A They could find none.

Q In other words, there are no other copies of that in existence?

A They told me they could find none.

Q They could find none.

A I spoke to Mr. David Ollinger, who was then a commissioner.

MR. MORRIS: At this point, I call on Mr. Gold to produce the first amendment approval by the Board of Estimate of the approval of the first amendment. Mr. Gold, you indicated you would produce that for us in the record at page 517.

MR. GOLD: Are you talking now about the Board of Estimate's approval?

MR. MORRIS: Yes, we have the City Planning Commission approval and that was introduced into evidence,

but at the time we called for it you were unable to find the Board of Estimate approval and I respectfully request that you furnish it.

MR. GOLD: I may be in that same position. You will have to bear with me a moment to see whether I do have it.

THE COURT: Surely.

(Pause)

MR. GOLD: I am afraid not, your Honor.

THE COURT: All right.

MR. GOLD: I can assure the Court I have the date, just let me verify it, November 21, 1963?

MR. MORRIS: Yes.

MR. GOLD: I will have that here tomorrow. I will have it here first thing in the morning.

THE COURT: Thank you.

Q Mr. Fried, would you turn to page 538 of the minutes?

A Yes.

Q Isn't it true, Mr. Fried, that in addition to the number of low income families that were provided for and that you testified to that there were welfare families who became tenants in middle income projects?

MR. GOLD: I object. That is leading. He

is putting the testimony in Mr. Fried's mouth.

THE COURT: Objection sustained. Mr. Morris, may I remind you that at the time Mr. Fried was on the stand before you called Mr. Lumbard, you were developing what took place at Gracey Mansion or rather at City Hall with Mayor Wagner present and you were going to talk had he developed other confidences dealing with the same subject matter. You had him meticulously outline who was present and when and you have suddenly dropped that and I fear it is because I through you off base by having you call Mr. Lumbard. I just want you to know that that remains unfinished.

MR. MORRIS: Yes, thank you very much.

THE COURT: You do have that in mind?

MR. MORRIS: Yes, thank you, your Honor.

Q Yes, Mr. Fried, let us come back to the situation that occurred with respect to the development of the number of low income units.

You testified, as I recall, that there were a number of discussions among all of the government officials involved at that time, isn't that so?

A Yes.

Q And that the figure of 2,500, which ultimately was testified to before the Board of Estimate and is

in evidence in this proceeding, was one that was arrived at as a result of many officials discussing and agreeing on a compromise figure among themselves, is that right?

MR. LAND: Objection, your Honor. That is exactly the problem we have had. We have to get the specifics.

THE COURT: Precisely. I am afraid, Mr. Morris, we cannot -- it is an effective point, but being especially effective in my humble judgment, you will have to develope it in such a way that I can come to that conclusion, if that is what you are going to contend.

MR. MORRIS: Yes.

Q Would you tell us what other discussions occurred in arriving at the figure of 2,500 units of low income housing?

THE COURT: Mr. Fried, can we do this? I think we must all be agreed that you are an alert person.

THE WITNESS: Thank you, sir.

THE COURT: Won't you be good enough, you see what we are concerned with. We cannot take your summation of what took place on this score. Counsel are perfectly right when they say you have to give us who was present, as best you can recall, where and what was said.

ojw 10 Fried-redirect

Now, rather than keep giving you one question after another, won't you be good enough to tell us what your memory, as it has been trying ever since you have been on the stand, what your best memory enables you to testify to on that score? Can you do that, Mr. Fried?

THE WITNESS: There was only one meeting at which I was personally present and that is the one I testified to.

THE COURT: Okay, now it is clear.

THE WITNESS: The various people whom I testified participated stated at that meeting that they had other discussions, but the sum and substance of their position was stated at this crucial meeting, the purpose for which was to have Mayor Wagner make a decision and both Mr. Badillo on his side advance a position which was contained in Defendants' Exhibit D and Mr. Felt and Deputy Mayor O'Keef presented their position. The may said a decision and that was subsequently carried out.

THE COURT: All right

T5B

Q Now, Mr. Fried, would you turn to page 550 of the minutes, line 15, there is a word "sacrifice demands". Isn't that a typographical error, shouldn't that be satisfy?

A I believe so. That is the notified.

THE COURT: How does it read now?

THE WITNESS: The proposal was made to convert the reuse of Site 30 from middle income to low rent housing in order to sacrifice demands that were being made on behalf of the squatters who had occupied Site 30."

THE COURT: How do you say it should read?

THE WITNESS: "The proposal was made to convert the reuse of Site 30 from middle income to low rent housing in order to satisfy demands that were being made on behalf of the squatters who had occupied Site 30."

THE COURT: Unless I hear to the contrary, the Court orders that the official transcript be corrected accordingly and directed the court reporter to see that that is physically done.

All right.

Q Commissioner, will you turn to page 562 of the minutes. No, we took care of that before. Don't bother with that. That was the provision where you said that there were no other copies of the report.

Would you turn to page 564. No, skip that, too. Withdrawn.

Turn to page 568, line 22. You described in cross-examination about the West Side Urban Renewal area office and the personnel of that office.

Now, were the personnel of that office appointed by the HRB and the HDA, your agency?

A Yes.

Q They were appointed by them?

A Yes.

Q Were they acting under the direct supervision and guidance of your agency?

A Yes, in the person of the director of development.

Q Were they authorized to represent to the general public the situation with respect to this rehabilitation of bownstones and various other aspects of the West Side Urban Renewal Project?

MR. LAND: We object to the leadingness of these questions especially on redirect examination. A totally leading question.

MR. MORRIS: I will withdraw the question.

Q Would you please tell us what was the function of those people in the West Side Urban Renewal site office?

A They had several functions. Number one was to

bring to the attention of the people then resident within the project area or who required relocation, the benefits to which they were entitled.

They were also there to assist prospective and ultimate purchasers of brownstones in the processing of whatever papers were necessary if it were to be a FHA financed mortgage or to assist them in giving them the benefit of their advice with respect to the manner in which buildings should be rehabilitated and to generally explain to the public when requested what the Urban Renewal plan was and what the city was attempting to do within the project area.

Q Now, would you turn to page 580, please: Do you have it?

A Yes.

Q Line 16, the minutes show "We get a number far in excess of 300 units". Was your testimony 300 or 3,000?

A 3,000.

MR. MORRIS: I respectfully request that the minutes be corrected.

THE COURT: Any objection.

MR. DOUW: Your Honor, as to that statement in particular, I think there was a motion to strike which

was granted.

THE COURT: Well, if that is so, then that would apply to 300 or 3,000.

MR. DOUW: That's correct.

THE COURT: Mr. Morris, so I cannot allow your motion to amend.

Bu the way, I can amend it and still have it stricken for the sake of the record, that's right. He has a right to ask even though it is stricken.

All right, 3,000 is the number of be inserted, Mr. Court Reporter, and you will do so, please.

Yes, with the distinct understanding that it is stricken.

Q At page 627, lines 17 and 18.

A I think I have the page.

Q 627?

THE COURT: He is doing the best he can. Go ahead.

Q Lines 17 and 18 which reads:

"Q Let me say, you say the figure may be adjusted to meet the needs of the community, is that correct?"

THE COURT: What Mr. Fried has trouble with is you have given him a copy that does not properly

record the page numbers and he is just getting right now what page you are talking about.

A What page is it?

Q 627.

THE COURT: Can you find it?

THE WITNESS: Now I have it.

THE COURT: All right.

Q Lines 17 and 18.

A I have it.

Q Your reference thereto "adjusted to meet the needs of the community."

Now, would you say that "to meet the needs of the community" refers to a substantial variation from the 2500 units or an insubstantial variation?

A May I read --

Q Yes, read preceding it.

THE COURT: I don't know what you are saying. I haven't got it in front of me. The way to do it is to read it. Such and such a page and the line you said and then I have it, don't you see. I get it that way. Then put your question.

Q Reading from page 627 on line 5:

"A The figure 2500 was used as an approximation and I so testified. It did not mean 2501 or 2499,

it was an approximation and the ultimate figure depends on, in very much instances, the configuration of the land that is used and how many units you get on and whether you're building a large number of units of small apartments or a small number of large apartments and you adjust that as to the needs of the community when you get ready to draw the architectural plans of the building so that the various officials representing the HRB and the HDA and the City of New York used the figure 2500 as a rule of thumb.

"Q Let me say, you may say the figure may be adjusted to meet the needs of the community, is that correct?"

Now, when we refer to "adjustment to meet the needs of the community," would you clarify just what was meant by that?

THE COURT: Now I understand your question.

A The planning period for many of these Urban Renewal plans extends over a long period of time, years. During that period the nature of the population within a project area changes, nothing remains static. People die, people are born, people go back to their homeland, people get jobs in different places.

As the project progresses you try and find the

latest information available to you. It may turn out that when you started your project you had middle-aged people and when you are ready to build they are elderly and you may want to build many more small units specifically designed for them.

You may have larger families so that you can never have a fixed figure which you say, this is the holy number and nothing may change it. For the best interests of the community, you will vary it, probably one way or the other and it will always be by a small amount, it is never a tremendous amount.

Q Now, in cross examination questions were asked of you with respect to the fact that there was lack of interest in investigating in the West Side Urban Renewal area during the period subsequent to 1970.

MR. LAND: Your Honor, I would like to have the particular question he is referring to on cross examination.

MR. MORRIS: It was in today's cross examination and not in the minutes.

MR. LAND: Very well.

Q Would you tell us --

THE COURT: It is in the minutes, but you haven't got them in front of you.

MR. MORRIS: I don't have them, your Honor.

Q Would you say that one of the influences in that lack of interest in investigating had something to do with the welfare tenants in the area and the squatters in the area?

MR. LAND: Objection to the leading question, your Honor. It is posing the answer right from the questioners mouth.

THE COURT: No, there comes a time when we have got to remember that we have an expert on the stand and I don't see the need for the tender worry over that. I will take it. Are you finished with your question?

MR. MORRIS: Yes, your Honor.

THE COURT: Will you read it, Mr. Court Reporter?

(Question read)

THE COURT: Thank you very much.

A I would think that would be one factor --

MR. LANE: We haven'- yet established what welfare tenants he is talking about and what squatters he is talking about.

THE COURT: You can knock it to kingdom come when you get a chance on recross.

A I answered, I believe it would be one factor.

Q Would it be an important factor in the situation

with respect to investments?

A That would depend on the individual investor.

Q Now, assuming the West Side Urban Renewal area were to be completed and if it were completed by the inclusion of a large number of low income housing units, let's assume they were all low income housing units, would your response to the question asked you on cross examination as to the eight standard set in the Urban Renewal plan in Exhibit 5 be the same as it was that they were carried through, that the provisions of those eight conditions were carried through?

A No, it would not.

Q That would change your answer?

A That's right.

Q Now, with respect to the new buildings --

THE COURT: On that score, you had better spend a little time on that.

We had better go over until tomorrow. Gentlemen, I return to you Exhibit 12.

MR. MORRIS: Also Exhibit D, Mr. Fried.

THE COURT: You remember this morning I referred to a statement that was given by Mr. Morris to all of us at the conference on November 20, 1973, Mr. Clerk, will you mark that as a Court's exhibit.

ojw 20 Fried-redirect

(Court Exhibit B was marked for identification)

xxx

THE COURT: Gentlemen, thank you.

MR. GOLD: Your Honor, just a clarification, is that the six item statement?

THE COURT: That's right. I am marking that as a Court Exhibit. It is a part of the record and we adjourn until tomorrow at 10:00 o'clock and, Mr. Fried, I apologize again to you for having interfered with the continuity of your testimony. Mr. Morris must take part of the blame for that and we are going to go over until tomorrow at 10:00 o'clock sharp.

Gentlemen, you might as well note this in your books because you are busy lawyers. You have already gotten the Court's permission with regard to this Wednesday, April 24th in the afternoon, and Mr. Morris I presume you are due up in the Appellate Division about what time?

MR. MORRIS: 2:00 o'clock.

THE COURT Then we won't sit longer than half past 12:00 in order to give you a chance to get some luncheon and review what you are going to say to the Appellate Division. I know how it is. Will that be sufficient time?

MR. MORRIS: It will be, your Honor.

THE COURT: All right, half past 12:00 on Wednesday.

On Friday, the 26th, I presume it will be all right with you, Mr. Land, if we sit to 1:00 o'clock or close thereto and you will still be able to make your commitment and be prepared for it in the afternoon of that day.

MR. LAND: Yes, your Honor.

THE COURT: Very wlel. Now, you know that after we found that our -- your efforts, rather, with regard to negotiation failed, I told you that the date that we had fixed a long time ago, to wit, today I would honor. Natually there are some -- there have been some other commitments that I have had in the meantime over these months and I will not be available to you in this case on the 2nd and 3rd of March, that is Thursday and Friday of next week.

I would suggest, gentlemen, that you talk among yourselves. I know you are busy, I know you have burdens, I appreciate your burdens, I have burdens, too, we may very well have to sit in the evening. I will be glad to do it. I have done it many times in my life-time if you feel you want it, just indicate it to me and

I will try to accommodate you.

We can sit during the day and then meet for a coup[illegible] of hours in the evening or start earlier, whatever you propose I will be glad to take it under advisement and meet your convenience. That is the only way we are going to get this thing done and completed.

Very well, gentlemen, good night.

(Time noted: 4:55 p.m.)

(Adjourned to April 23, 1974 at 10:00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Walter S. Fried (resumed)		683	812 862	
Eliot Lumbard	841			

EXHIBIT INDEX

	Identification	In Evidence
Defendant		
G	685	688
Plaintiff		
30	812	
31	816	
Court's		
B	877	